No. 90-1889

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1990

JOSEPH FLUENT, Individually and as a representative of the Class of Salamanca Lessees holding 99-year leases from Seneca Nation of Indians; JAMES V. MONGILLO, Individually and as a representative of the class of Salamanca lessees holding 50-year leases from the Seneca Nation of Indians and KEITH MCCLAIN, Individually and as a representative of the class of congressional village lessees holding 99-year leases from the Seneca Nation of Indians; ROBERT ADAMIC, Individually and on behalf of the class of lessees who signed the "40/40 Lease" Tendered by the Seneca Nation of Indians on or about September 4, 1990; MARILYN ADAMIC, Individually and on behalf of the class of lessees who signed the "40/40 Lease" Tendered by the Seneca Nation of Indians on or about September 4, 1990; SALAMANCA COALITION OF UNITED TAXPAYERS, INC., Individually and on behalf of its membership,

Petitioners,

vs.

SALAMANCA INDIAN LEASE AUTHORITY; DAVID FRANZ, Individually and as Attorney for the City of Salamanca Indian Lease Authority; ANTONIO CARBONE, Individually and as Mayor of the

Respondents.

(Additional Respondents continued inside Front Cover.)

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITION FOR WRIT OF CERTIORARI

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(Additional Respondents.)

City of Salamanca and also as member of the Salamanca Indian Lease Authority; CITY OF SALAMANCA; PATRICK CALLAGHAN, Individually and as Chairman of the Salamanca Indian Lease Authority; LINDA RYCHCIK, Individually and as member of the Salamanca Indian Lease Authority; HENRY STEFANSKI, Individually and as a member of the Salamanca Indian Lease Authority; OWEN K. PHILLIPS, Individually and as a member of the Salamanca Indian Lease Authority; DANN COLVIN, Individually and as a member of the Salamanca Indian Lease Authority; PAUL TAYLOR; PENNY BUCKLEY; SENECA NATION OF INDIANS,

Respondents.

QUESTIONS PRESENTED

1. Does the Doctrine of Indian Sovereign Immunity bar non-Indians from obtaining judicial review and construction of federal statutes that affect their constitutional, statutory and contractual rights?

2. Do the joinder requirements of Rule 19 of the Federal Rules of Civil Procedure effectively immunize federal Indian statutes from judicial review, unless review is sought by Indians?

3. Did the lower courts err by refusing to consider legislative history to determine whether Congress intended to waive Indian Sovereign Immunity by legislation passed in 1875 and 1890?

4. Did the lower courts misconstrue the Acts of 1875 and 1890?

PARTIES TO THE PROCEEDINGS

Pursuant to Supreme Court Rule 29.1, all parties to the proceeding are listed in the caption.

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No. _____

JOSEPH FLUENT, *et al.*,

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the Court of Appeals for the Second Circuit is reported at 928 F.2d 542 (CA 2 1991) and is reproduced in the Appendix to the Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit (hereinafter "Appendix" or "App.") at pages 1a-14a. The decision of the United States District Court for the Western District of New York which was the subject of the proceedings in the Court of Appeals is unpublished and is reproduced in the Appendix (App. at 49a-65a). An additional decision of the District Court which was not the subject of the appeal to the Court of Appeals is also reproduced in the Appendix (App. at 25a-42a).

JURISDICTION

The opinion of the Court of Appeals for the Second Circuit was announced on March 15, 1991; it became final upon issuance of that Court's Mandate on April 5, 1991. This Court has jurisdiction pursuant to 28 U.S.C. §1254(1) and Supreme Court Rule 10.

CONSTITUTIONAL PROVISIONS, STATUTES AND ORDINANCES INVOLVED

I. Constitutional Provisions:
- —U.S. Const. Art. I, §8 ..... App. at 598a
- —U.S. Const. Art. VI ..... App. at 598a
- —U.S. Const. Amend. V ..... App. at 598a
- —U.S. Const. Amend. XIV ..... App. at 599a

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- —"Act of February 19, 1875" ..... App. at 118a
- —"Act of September 30, 1890" ..... App. at 123a
- —"Act of August 15, 1950" ..... App. at 124a
- —"Salamanca Settlement Act of 1990" . App. at 128a
- —12 U.S.C. §1709(q) ..... App. at 599a
- —Fed. R. Civ. P. 19 ..... App. at 600a
- —24 CFR Ch. 11, §203.43j ..... App. at 602a

III. New York Statutes:
- —N.Y. Pub. Auth. Law, Art. 8 ..... App. at 141a
- —N.Y. Indian Law, §46 ..... App. at 601a

STATEMENT OF THE CASE

Two Acts of Congress create the landlord-tenant relationship between the petitioner lessees ("Lessees") and their landlord, respondent Seneca Nation of Indians ("Seneca Nation"): the Act of February 19, 1875, ch. 90, 18 stat. 330 ("Act of 1875") App. at 118a-122a; and the Act of September 30, 1890, ch. 1132, 26 stat. 558 ("Act of 1890"). App. at 123a. For more than a century lessees have occupied homes and businesses on 3,300 acres of the Seneca Nation's Allegany Reservation pursuant to individual leases authorized by the Acts of 1875 and 1890. The lessees include several distinct classes:

(A) Lessees in the City of Salamanca, New York ("City") who occupy their property pursuant to 99-year leases originally granted by the Seneca Nation in 1892 and which expired on February 19, 1991. App. at 452a-454a. These 99-year leases include leases offered to some lessees by the Seneca Nation following the Second Circuit's 1942 decision in *U.S. v. Forness,* 125 F.2d 928 (CA2 1942), *cert. den. sub. nom. City of Salamanca v. United States,* 316 U.S. 694 (1942). App. at 455a-464a.

(B) Lessees who occupy their property pursuant to 50-year leases which the Seneca Nation issued in or around the late 1980's. App. at 465a-473a.[1]

(C) Lessees who reside outside the City in the villages of Carrollton, Great Valley, Allegany and Vandalia, referred to hereinafter collectively as the "Congressional Villages." Virtually all lessees in the Congressional Villages hold 99-year leases identical to the City leases.

[1] These lessees held 99-year leases but were unable to obtain home mortgages, equity loans, business loans, etc., because banks refused to loan on collateral subject to expiring 99-year leases. To obtain mortgages etc., some 99-year lessees accepted 50-year leases offered by the Nation. There were no negotiations for the terms and conditions of the 50-year leases. Petitioners allege that the 50-year lessees are also 99-year lessees because the 99-year leases originally covering their property were never discharged or cancelled of record and the 50-year leases were not authorized by federal law nor negotiated as required by the Acts of 1875 and 1890.

(D) Lessees who signed a new lease offered in September, 1990 by the Seneca Nation. App. at 486a-516a. This new lease contemplates a 40-year term with a possible 40-year renewal. Thus, it is referred to as the "40/40 Lease."

(E) A group of lessees (including City, Congressional Village, 99-year, 50-year and 40/40 lessees) known as the Salamanca Coalition of United Taxpayers, Inc. ("SCOUT"). When the complaint herein was filed on November 30, 1990, SCOUT had approximately 600 members. Today, SCOUT's membership exceeds 900 persons. Each member typically represents a spouse and children or other family members. SCOUT is incorporated under New York state law and is itself a lessee of City land subject to a 99-year lease.

Each leased parcel is subject to a separate lease between each individual lessee (or lessee's predecessor) and the Seneca Nation. It is estimated by the Seneca Nation that there are approximately 3,300 lessees. Of that number, approximately 200 are Congressional Village Lessees, 150 are 50-year lessees and the balance are 99-year City lessees. Some of the foregoing have, since this action was commenced, become 40/40 lessees by signing the 40/40 lease.[2]

[2] The District Court granted the Seneca Nation's Motion to Dismiss on January 25, 1991. On January 29, 1991 the District Court granted Petitioners' Rule 54(b) Motion and a final judgment was entered dismissing the Seneca Nation as a party and dismissing counts 1, 8 and 10 of the Complaint pursuant to Fed. R. Civ. P. 19(b). On February 5, 1991 Petitioners' Motion to Expedite the Appeal was granted and Petitioners were directed by the Court to serve and file their Brief on Appeal, Joint Appendix and Record on Appeal by noon, February 11, 1991. After filing on that date, Petitioners filed a motion for an injunction to maintain the status quo while the appeal was *sub judice*. Oral argument on the appeal was scheduled for February 19, 1991 (the day the leases were to expire) and the motion for a status quo order was returnable on that day. At the close of oral argument on February 19, 1991, the Court of Appeals reserved decision on the appeal and granted Petitioners' motion for an injunction to maintain

(Footnote continued on following page.)

The Act of 1875 created the landlord/tenant relationship between lessees and the Seneca Nation, conferring certain obligations and benefits on each party:

> Section 3. That all leases of land situate within the limits of said villages when established as hereinbefore provided, *** shall be valid and binding upon the parties thereto, and upon said Seneca Nation for a period of five years from and after the passage of this act, except such as by their terms may expire at an earlier date; and at the end of said period, or at the expiration of such leases as terminate within that time, said nation through its counselors shall be entitled to the possession of the said lands, and shall have the power to lease the same: *Provided, however, that at the expiration of said period, or the termination of said leases, as hereinbefore provided, said leases shall be renewable for periods not exceeding 12 years, and the persons who may be at such time the owner or owners of improvements erected upon such lands, shall be entitled to such renewed leases, and to continue in*

(Footnote continued from preceding page.)

the status quo. The Second Circuit's decision affirming the District Court was issued on March 15, 1991. *Fluent v. Salamanca Indian Lease Authority,* 928 F.2d 542 (CA 2 1991). That decision ordered the status quo injunction rescinded. On March 28, 1991 Petitioners filed a motion with the Second Circuit to stay the issuance of the Court's mandate to permit Petitioners to file their petition for a writ of certiorari with this Court. The Second Circuit denied Petitioners' stay motion on April 5, 1991 and the mandate of the Second Circuit issued on that date. By application to this Court filed on April 15, 1991, the Petitioners requested the Circuit Justice for the Second Circuit to recall and stay the mandate of the Second Circuit. Upon denial, petitioners renewed the Application to Justice Stevens who referred it to the full Court. On April 29, 1991, the Court denied Petitioners' Application. April 29th was the last day for lessees to accept the 40/40 lease from the Seneca Nation. Upon denial of the application to recall and stay the Second Circuit mandate, several hundred lessees went to the designated location to sign a 40/40 lease with the Seneca Nation. SCOUT has obtained the signatures of approximately 800 lessees indicating that their signatures on the 40/40 lease were under protest. An estimated 20% of the lessees have refused to sign the 40/40 lease and now have no lease at all.

possession of such lands, on such conditions as may be agreed upon by him or them and such counselors; and in case they cannot agree upon the conditions of such leases, or the amount of annual rents to be paid, then the said counselors shall appoint one person and the other party or parties shall choose one person, as referees to fix and determine the terms of said lease and the amount of annual rent to be paid; and if the two so appointed and chosen cannot agree, they shall choose a third person to act with them, the award of whom, or the major part of whom, shall be final and binding upon the parties; and *the person or persons owning said improvements shall be entitled to a lease of said land and to occupy and improve the same according to the terms of said award,* he or they paying rent and otherwise complying with the said lease or said award; *and whenever any lease shall expire after its renewal as aforesaid, it may, at the option of the lessee, his heirs or assigns, be renewed in the manner hereinbefore provided.*

* * *

Section 7. That the courts of the State of New York within and for the County of Cattaraugus, having jurisdiction in real actions, *and the circuit and district courts of the United States in and for the Northern District* [*now Western District*] *of said state, shall have jurisdiction* of all actions for the recovery of rents and *for the recovery of possession of any real property within the limits of said villages,* whether actions of debt, ejectment, *or other forms of action,* according to the practice in said court; and actions of forcible entry and detainer, or of unlawful detainer arising in said villages, may be maintained in any of the courts of said county which have jurisdiction of such actions. App. at 119a-122a (emphasis added).

* * *

Subsequent to the Act of 1875, the Act of 1890 was passed; it extended the term of the leases and renewals authorized by the Act of 1875 from 12 years to 99 years.

It expressly did not amend the Act of 1875 in any other respect. App. at 123a.

Each 99-year lease expressly provides for a renewal term up to 99 years upon expiration on February 19, 1991. Each lease further provides that the renewal is pursuant to the Acts of 1875 and 1890 which provide that the rent and conditions of the renewal period will be derived by negotiation or, if negotiations fail, arbitration.

The District Court for the Western District of New York and the Court of Appeals for the Second Circuit concluded that no federal forum may adjudicate the rights and responsibilities created and conferred by the Acts of 1875 and 1890, and by the leases granted thereunder, unless the Seneca Nation seeks such adjudication.[3] Lessees' Count One, sought to declare the meaning of the Acts and other equitable relief; it was dismissed on the basis of Indian sovereign immunity.

Also dismissed were two claims asserted by lessees against Respondents other than the Seneca Nation. Count Eight sought a declaration that an Agreement between the City and the Nation, executed in July, 1990, is invalid and void. Count Ten alleged that a new statute which purports to "implement" that Agreement is unconstitutional. Seneca Nation Settlement Act of 1990, Pub. L. 101-503, 104 Stat. 1292 ("Settlement Act of 1990"). App. at 128a-140a. That statute was signed by President Bush on November 3, 1990. Lessees have alleged numerous constitutional defects with the Settlement Act of 1990. *See,* App. at 45a-46a.

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[3] The Nation has frequently availed itself of the federal courts to enforce its statutory and contractual rights against lessees. *See e.g., Forness, supra,* 125 F.2d 928. No other court has jurisdiction over these claims. New York State courts are incompetent to adjudicate Indian land claims, *see, e.g., New York Indians,* 5 Wall. (72 U.S.) 761 (1866). *See also,* Indians, 25 U.S.C. §233 (1983). The Seneca Nation's Peacekeeper Courts do not have jurisdiction over disputes between Indians and non-Indians. New York Indian Law, §46 (McKinney's 1991 Supp.).

The early history of the leasing at issue and a brief statement of recent events are set forth below.

A. Historical Framework

Title to the Allegany Reservation traces back to the "discovery doctrine" whereby the European country "discovering" land in the "New World" asserted a claim to possession of that territory as against other European countries. *See, Johnson v. McIntosh*, 8 U.S. (Wheat.) 543 (1823). The European countries agreed that their claims were subject to a right of occupancy by the native people in the discovered territory.

Pre-emptive rights arise from the "discovery doctrine." *See e.g. Johnson, supra*, 8, U.S. at 571-604 and *Worcester v. Georgia*, 31 U.S. (Pet.) 515, 543-461 (1832) *See also, Oneida Indian Nation v. County of Oneida*, 414 U.S. 661, 666-668 (1974) and *Fellows v. Blacksmith*, 60 U.S. 366 (1857). The right of pre-emption is the right to extinguish the Native Americans' right of occupancy.

The pre-emptive rights to the Allegany Reservation are in a private grantee, the Ogden Land Company.[4] Neither the Seneca Nation nor the United States holds title to

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[4] The Allegany Reservation Land was conveyed by Massachusetts to Robert Morris by Deed dated May 11, 1791. Two subsequent transactions conveyed the Allegany Reservation Lands from Robert Morris to grantees commonly referred to as the Holland Land Company. By treaty between the Seneca Nation and Robert Morris dated September 15, 1797, the Indians surrendered large tracts of land, excepting Reservations including the Allegany Reservation. App. at 83a-91a. By Deed dated September 12, 1810 the Holland Land Company granted a Deed to David A. Ogden for land including the Allegany Reservation. David Ogden then conveyed, by Deed dated February 8, 1821, the Allegany Lands to the trustees of what is known as the Ogden Land Company. This brief summary of title is taken from an abstract of title prepared by Victor H. Samuelson, Historian/Abstractor, Bradford, Pa. Mr. Samuelson, aged 93 years,

(Footnote continued on following page.)

the Allegany Reservation on which the City and the Congressional Villages are built. The Seneca Nation has only the Indian right of occupancy.

The leasing at issue began when the railroads crossed the Reservation and formed a junction at what was to become the City of Salamanca. Leases were granted to the railroads and so-called "white-settlers" by the Nation and by individual Indians. In the early 1870's those leases were declared void. App. at 309a-310a. *See also, Forness, supra*, 125 F.2d at 930-31 and n. 1. The leases were held to violate the federal Non-Intercourse Act. Congress was petitioned to remedy that situation. App. at 302a-303a, 309a-310a. The remedy was the Act of 1875 as amended by the Act of 1890.[5] The 99-year leases at issue were all granted pursuant to those Acts, beginning in 1892. They all expired on February 19, 1991.

B. Recent Developments

In 1987, the respondent Salamanca Indian Lease Authority ("SILA") obtained authorizations from individual lessees authorizing SILA "... to negotiate

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has researched title to the Allegany and Cattaraugus Reservations since he returned from World War I in the early 1900's. Mr. Samuelson has followed the case at bar with great interest.

By the Buffalo Creek Treaty of 1838 (App. at 91a-106a) the Seneca Nation transferred its right of occupancy in four reservations, including the Allegany Reservation, to Ogden for $202,000. A tremendous outcry followed the Treaty. Quakers residing in the region (who were advised by Daniel Webster) and settlers in what was to become the City of Salamanca supported the Seneca Nation's protest to the Buffalo Creek Treaty of 1838. The Buffalo Creek Treaty of 1842 followed. App. at 107a-117a. By that Treaty, Ogden gave back the right of occupancy to the Allegany and Cattaraugus Reservations, retaining unencumbered title to the Buffalo Creek and Tonawanda Reservations. The Ogden Land Company still retains the right of preemption to the Cattaraugus and Allegany reservations.

[5] For a more thorough description of the historical background, *see* Letter from John R. T. Reeves dated December 26, 1914, contained in H. Doc. 1590, 63rd Congress, 3d. Sess. App. at 262a-293a.

with the Seneca Nation . . . for the terms and provisions of a renewal" of the existing leases.[6] The authorization form used provided: ". . . [T]hat the *Salamanca Indian Lease Authority shall have no authority to execute or accept such a renewal lease for (me) (us)* without (my) (our) specific written authority." App. at 547a-548a. (emphasis added).[7] The Congressional Village lessees *never* authorized SILA or any other body to negotiate on their behalf.

From approximately 1988 through the summer of 1990, SILA and the Seneca Nation negotiated the terms and conditions of two agreements and the 40/40 lease. In July, 1990 the City and the Seneca Nation executed the agreements. The first agreement ("Agreement") provided that the Nation would offer a 40-year lease to the lessees with a purported right to a 40-year renewal. App. at 517a-535a. The Agreement also stated a formula

[6] SILA was created by New York Public Authorities Law, Article 8, Sections 1790-1799 (McKinneys 1981). App. at 141a-151a. Petitioners allege that the State of New York was incompetent to create SILA because New York is incompetent to legislate in matters affecting Indian lands. Nonetheless, whatever defect in SILA's authority existed from New York's want of authority in this matter, was rendered moot upon SILA obtaining written authority from the majority of city lessees. SILA itself represented on many occasions that after 1987 it did not operate pursuant to the New York Public Authorities Law.

[7] After lessees received the 40/40 lease in September, 1990, many cancelled SILA's authority, in writing, as permitted by the authorization form. App. at 549a. In response, SILA purported to reject the 40/40 Lease on behalf of those lessees. App. at 550a-552a. SILA's action was obviously in retaliation against those lessees who believed SILA had abused its authority. The District Court found that SILA's conduct was inexplicable and unauthorized since SILA *never* had authority to accept or reject a lease for any lessee. App. at 27a-28a, 34a. Inexplicably, the Second Circuit ignored this factual determination and stated that SILA had in fact *agreed* to the 40/40 lease, apparently on behalf of the lessees, thereby satisfying the requirements of the statutes and leases. App. at 11a. Numerous claims against SILA and its members are still pending in the District Court. That Court determined that those claims present ". . . sufficiently serious questions going to the merits to make them a fair question for litigation." App. at 39a.

for calculating rent due and owing to the Nation and other terms and conditions applicable to the leasehold interest.

Attached to the Agreement was the second agreement negotiated by SILA and signed by the City known as the Joint Leasing Commission Agreement ("Commission Agreement"). It purports to create a Commission comprised of members of the Seneca Nation and appointed representatives from the City. App. at 536a-546a. That Commission is vested with authority to supervise various lease-related matters including the collection and assessment of rent (which is actually assessed as a tax) and procedures to arbitrate disputes arising under the Agreement and the leases.

Lessees allege that many provisions in the 40/40 lease, the Agreement and the Commission Agreement violate state and federal law.[8] By dismissal of Lessees' Count Eight, the Courts are foreclosed from adjudicating the validity of those documents.

[8] For example, the 40/40 lease and the Commission Agreement provide that lessees may arbitrate disputes with the Seneca Nation. Lessees may appeal the Arbitrators' decision to the United States District Court for the Western District of New York. App. at 543a-546a. Indisputably, only Congress can create federal court jurisdiction. No Act of Congress created the alleged appeal jurisdiction in the Western District of New York. The only jurisdictional provision in the Settlement Act of 1990 is at section 9. That expressly creates exclusive jurisdiction in the Western District over constitutional challenges to the Act of 1990. That express grant of jurisdiction has been refused by the Federal Courts herein. Additionally, none of the Agreements nor the Settlement Act of 1990, purport to waive the Nations' sovereignty in connection with this fictional appeal to the District Court. Congress recently responded to this concern by including in a committee report, accompanying the appropriations bill necessary to appropriate $35 million owing pursuant to the Settlement Act of 1990, declarations of Congressional intent that the federal expenditure is dependent upon submission of arbitration appeals to the federal district court. Congress clearly intends that to sufficiently state its intent to subject the Seneca Nation to federal court jurisdiction. The decisions below, however,

(Footnote continued on following page.)

The Settlement Act of 1990 purports to adjust "past inequities" arising from nominal rents paid to the Seneca Nation pursuant to the leases authorized by the Acts of 1875 and 1890. It was enacted, in part, to "facilitate the negotiations of new leases." Settlement Act of 1990, §§2(b)(1), 2(b)(3). App. at 130a-131a.[9] By dismissal of

(Footnote continued from preceding page.)
create precedent that such legislative history is *insufficient* to constitute a clear waiver of the Nation's sovereign immunity. *See infra* at Point C. The Nation reserves all "rights, powers and remedies now or hereafter existing at law or in equity or by statute or otherwise." 40/40 Lease, §24, App. at 510a-511a. This and other provisions in the lease which provide for a direct remedy by the Nation against a lessee upon non-payment of rent or other default (App. at 507a-511a) are directly contrary to an Act of Congress passed in 1950, Public Law 690, Ch. 707 (1950). App. at 124a-127a. That statute provides that only the City may foreclose against defaulting lessees. Pursuant to paragraphs 11 and 12 of the 40/40 lease (App. at 497a), the Seneca Nation becomes, *de facto*, the zoning board for the City of Salamanca. Petitioners allege that this is contrary to New York State law and that the City may not, by agreement, delegate its governmental functions over land use and zoning to the Seneca Nation. Paragraphs 13, 14 and 15 of the 40/40 lease contain various provisions by which the Nation exempts itself from liability which arises by law from ownership of land. App. at 498a-500a. Particularly, paragraph 15 purports to exempt the Nation from liability for hazardous waste found on its property. Paragraph 17 of the 40/40 lease, and other provisions, give the Seneca Nation a dominant role in the assessment and collection of the rental payment which, pursuant to New York State and City law, is assessed as a tax. App. at 500a. *See also*, Commission Agreement, §D (App. at 538a-540a) and Agreement, §IV (App. at 524a-526a). Petitioners contend that it is a violation of New York State law for the City to delegate its taxing authority to the Seneca Nation by agreement. Additionally, Petitioners contend that this provision is a further violation of the Act of 1950 which governs collection of the Indian rent.

[9] It does not require the lessees to accept the 40/40 lease. The Act of 1990 clearly declares that the State of New York and the United States have no authority over lease negotiations between lessees and the Seneca Nation. Settlement Act of 1990. §§5(c)(d). App. at 135a. Lessees demanded that the Nation renew and negotiate or arbitrate

(Footnote continued on following page.)

Count 10, the courts are precluded from adjudicating the constitutionality of the Settlement Act of 1990.[10]

(Footnote continued from preceding page.)

pursuant to the Acts of 1875 and 1890. App. at 553a-559a. The Nation's response threatened to revoke the offered 40/40 lease from any lessee who insisted on a separate right to negotiate or arbitrate. App. at 560a-566a. Subsequent requests by lessees to negotiate with the Nation (App. at 570a-571a; 576a-577a) were rejected (App. at 572a-575a; 578a-579a). The Nation revoked the 40/40 offer from the named Petitioners even though the Agreement provided that the offer would be kept open through February 19, 1991. App. at 520a. Although the nation subsequently restored the option to accept the 40/40 lease to those Petitioners, its capricious conduct demonstrates how the Nation may, with impunity, breach any and all provisions of the agreements and the leases.

[10] The Settlement Act of 1990 *does not* repeal, by implication or otherwise, the Acts of 1875 and 1890. It does not incorporate by reference, endorse, support, validate, mandate or even discuss the terms and conditions of the 40/40 Lease. In fact, the Settlement Act at §5 expressly provides that the United States and the State of New York may not be involved in negotiations for the terms of the lease and will not serve in any capacity to review or approve such leases.

The Settlement Act of 1990 confers no new or additional power on the Seneca Nation to lease land in Salamanca or the Congressional Villages. Because of the Non-Intercourse Acts, the Seneca Nation must have authorization from Congress to offer the 40/40 lease. The only authority upon which the Seneca Nation may rely to support its tender of the 40/40 Lease to the lessees is the Act of 1875 as amended by the Act of 1890. That is the only statute which clearly confers authority on the Nation to lease lands within the City and Congressional Villages.

REASONS FOR GRANTING THE WRIT

A. The Decisions Below Prohibit The Federal Courts From Interpreting And Determining The Validity of Acts of Congress.

By virtue of the decisions of the District Court and the Court of Appeals, the courts may not declare nor adjudge the meaning or validity of the Acts at issue. The Acts of 1875, 1890 and 1990 clearly affect lessees' property interests; yet, the decisions below bar lessees from obtaining judicial review or construction of those Acts. Absent judicial review, lessees' property interests may be altered or eliminated without any judicial check. Without access to the courts, lessees' due process rights are destroyed along with the doctrine of judicial review.

This Court has never held that Indian sovereign immunity may deprive non-Indians of constitutionally protected property and due process rights. Neither *Santa Clara Pueblo v. Martinez,* 436 U.S. 49 (1978), nor this Court's most recent case on point, *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma,* No. 89-1322 (Feb. 26, 1991) 498 U.S. _____, 111 S. Ct. 905 (1991), held that Indian sovereign immunity divests the federal courts of their necessary jurisdiction to interpret and adjudicate federal statutes and constitutional rights.

Santa Clara Pueblo, involved an Indian litigant who had access to a tribal forum. The dispute did not concern Indian land nor non-Indian claimants. Chief Justice Rehnquist noted that *Santa Clara Pueblo* was distinguished by its intra-tribal character in *Nat. Farmers Union Ins. Co. v. Crow Tribe,* 468 U.S. 1315, 1319 (1984) (Decision of Chief Justice Rehnquist, as Circuit Justice on Application for Stay.) *See also, Nat. Farmers Union Ins. Co. v. Crow Tribe of Indians,* 471 U.S. 845, 852 n.14 (1985).

Potawatomi supports the view that Indian sovereign immunity does not shield Indian Tribes from responsibilities arising from commerce with non-Indians.[11]

Legislative power over Indian affairs is committed exclusively to the U.S. Congress. U.S. Const. Art. 1, §8. Congress has plenary power over Indian matters. *Santa Clara Pueblo, supra*, 436 U.S. at 56. Nevertheless, Indian statutes passed by Congress are necessarily restricted by the United States Constitution, of which the Federal Courts are the final arbiter:

> The cases have described Congress' power over Indian affairs as "plenary." Plenary does not mean "absolute," in the sense that it may be exercised free of constitutional limits or judicial review. It is well settled today, although it may not have been when the term "plenary power" was first utilized, that Congress is subject to constitutional strictures in its dealings with Indians.

Cohen, Handbook of Federal Indian Law (Mitchie Co. 1982 ed.) at 217. *See also, Delaware Tribal Business Comm. v. Weeks*, 430 U.S. 73, 84-85 (1977). This is thoroughly consistent with, and indeed required as a necessary corollary of, the doctrine of judicial review announced by Chief Justice John Marshall in *Marbury v. Madison*, 5 U.S. (Cranch) 137 (1813) "If, then, the Courts are to regard the constitution, and the constitution is superior to any ordinary act of the

[11] Justice Stevens, concurring with the majority, observed that the majority decision in *Potawatomi* effectively acknowledged limits on the doctrine of tribal sovereign immunity "although it does not do so explicitly." Justice Stevens stated:

> [T]he Court today recognizes that a tribe's sovereign immunity from actions seeking money damages does not necessarily extend to actions seeking equitable relief. *Potawatomi, supra*, 111 S.Ct. at 913, Stevens, J., concurring.

Similarly, lessees' claims against the Seneca Nation seek prospective injunctive relief only.

legislature, the constitution, and not such ordinary act, must govern the case to which they both apply." *Marbury, supra*, 5 U.S. at 178.

Chief Justice John Marshall, who first most completely announced the doctrine of Indian sovereignty in *Worcester, supra*, 311 U.S. 575, surely never contemplated the result which the Seneca Nation has achieved herein. The decisions below mean that Congress may manipulate legislation to secure immunity from judicial review and that the status of a litigant (Indian Tribe or non-Indian) determines whether a federal court can adjudicate federal statutes.

This result is most conspicuous by the dismissal of Lessees' Count 10 challenging the constitutionality of the Settlement Act of 1990. Congress expressly anticipated the possibility that the Settlement Act of 1990 would be challenged on constitutional grounds. Therefore, it provided at Section 9:

> Notwithstanding any other provision of law, any action to contest the constitutionality or validity under law of this Act shall be barred unless the action is filed on or before the date which is 180 days after the date of enactment of this Act. Exclusive jurisdiction over any such action is hereby vested in the United States District Court for the Western District of New York. App. at 139a.

Clearly Congress anticipated, and therefor provided for a constitutional challenge to the Settlement Act. Nonetheless, the courts below determined they were powerless to adjudicate the validity of this statute. This result destroys the supremacy of the United States Constitution. U.S. Const. Art. VI, cl. 2. If an Act of Congress is unconstitutional, it should not matter which affected party brings that to the court's attention nor should any affected person be required to conform to an unconstitutional law because the party who benefits by the Act (an Indian Tribe) is content with it.

Every statute at issue deeply affects lessees' property interests in the homes and businesses which they and their ancestors have occupied and improved for more than a century. It is manifestly unjust and uniquely destructive of the supremacy clause, judicial review, and due process that non-Indians are *barred* by Indian sovereign immunity and the indispensible party doctrine of Fed. R. Civ. P. 19, from seeking judicial review and construction of Acts of Congress intimately related to their property interests.

B. There Is A Direct Conflict Among The Circuits.

The Second Circuit concluded that Fed. R. Civ. P. 19(b), in conjunction with the doctrine of Indian Sovereignty, totally deprives non-Indian litigants of judicial process: "The lack of a forum does not automatically prevent dismissal of the claims asserted [citations omitted]. 'Sovereign immunity may leave a party with no forum for [that party's] claims.' " *Fluent, supra*, 928 F.2d at 547. App. at 12a. The Tenth Circuit has held to the contrary. *Dry Creek Lodge, Inc. v. Arapahoe and Shoshone Tribes*, 623 F. 2d 682 (10th Cir. 1980) *cert. den.* 449 U.S. 1118, *reh. den.* 450 U.S. 960 (1981). In *Dry Creek Lodge* the Court held:

> The plaintiffs alleged that their personal and property rights under the Constitution had been violated by the defendants. A jury so found and awarded damages. There must exist a remedy for parties in the position of the plaintiffs to have the dispute resolved in an orderly manner. *To hold that they have access to no court is to hold that they have constitutional rights but have no remedy.*

Dry Creek Lodge, supra, 623 F.2d at 5 U.S. at 685 (emphasis added). *See also, Marbury, supra*, 5 U.S. at 163: "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury."

In *Dry Creek Lodge*, non-Indian plaintiffs owned and operated a lodge in Indian territory. They sued two Indian Nations in federal court over access to the lodge. The District Court dismissed plaintiffs' claims pursuant to *Santa Clara Pueblo* on grounds of Indian sovereign immunity. The Court of Appeals for the Tenth Circuit reversed. It held that since no forum then would be available to the plaintiffs: "The restrictions present in *Santa Clara Pueblo* should not be applied. There has to be a forum where the dispute can be settled." *Dry Creek Lodge, supra*, 623 F.2d at 685. The Court held that "... the reasons for the limitations [on jurisdiction] and the references to tribal immunity also disappear when the issue relates to a matter outside of internal tribal affairs and when it concerns an issue with a non-Indian." *Id.*

That is fully consistent with this Court's decision in *Montana v. United States*:

> The areas in which such implicit divestiture of sovereignty has been held to have occurred are those involving *the relations between an Indian tribe and non-members of the tribe* ... These limitations rest on the fact that the dependent status of Indian tribes within our territorial jurisdiction is necessarily inconsistent with their freedom independently *to determine their external relations.*

Montana, supra, 450 U.S. at 564 (citations omitted) (emphasis in original). *See also, Oneida Indian Nation, supra*, 414 U.S. at 667-668. Chief Justice Rehnquist suggested that the absence of a tribal forum for civil claims involving non-Indians meant that a federal forum was available: "More particularly, when they invoke the jurisdiction of a federal court under §1331, they must contend that federal law has curtailed the powers of the Tribe, *and thus afforded them the basis for the relief they seek in a federal forum.*" *Nat. Farmers Union, supra*, 471 U.S. at 852 (emphasis added).

Although *Dry Creek Lodge* has been narrowly construed by the Tenth Circuit, it remains undisturbed. It applies precisely to the factual scenario of the case at bar. The Second Circuit's decision herein cannot be reconciled with *Dry Creek Lodge*. That conflict is intolerable because of the fundamental nature of the rights at stake.[12]

C. The Courts Below Violated Cannons Of Construction Requiring Careful Scrutiny Of The Legislative History Of Indian Statutes.

Both the District Court and the Second Circuit refused to consider the legislative history of the Acts of 1875 and 1890:

> *** [O]nce plaintiffs have to start relying on the legislative history of the Act in making their argument for waiver of the SNI's sovereign immunity, the battle is lost. Congress' intentions to waive the tribe's sovereign immunity must be "unequivocally expressed" by the "plain meaning" of the language in the statute, or else there is no waiver (Dec. of District Court, App. at 59a.)
>
> Regarding the Appellants' contention that the legislative history supports their position that Congress intended to provide a forum for all lease disputes, the need to resort to legislative history similarly highlights the deficiency of the Appellants' position. "If Congress' intention is 'unmistakably clear in the language of the statute,' recourse to

[12] The Second Circuit's decision also creates a conflict within the Circuit. In *John v. City of Salamanca*, 845 F.2d 37 (CA2) *cert. den.* 488 U.S. 850, 102 L. Ed. 2d 106, 109 S. Ct. 133 (1988), the Court of Appeals declared:

> We conclude that Congress limited the sovereignty of the Seneca Nation over the reservation land within the City of Salamanca. The plain language of the 1875 Act supports this conclusion.

John, supra, 845 F.2d at 42. The Second Circuit's decision in the case at bar totally ignores *John*.

> legislative history will be unnecessary; if Congress' intention is not unmistakably clear, recourse to legislative history will be futile." *Fluent, supra,* 928 F.2d at 546; App. at 9a.

Both Courts relied on *Santa Clara Pueblo* to support their refusal to look beyond the language in the statutes to find waiver of sovereign immunity. The decisions impose an impossible prescience on last century's legislators. Effectively, the courts below held the 43rd and 51st Congresses to a standard advanced a century later which apparently requires some specific (although unstated) incantation to achieve waiver.

Courts, "are not free to say to Congress: 'we see what you are driving at, but you have not said it, and therefore we shall go on as before.' " *Rosebud Sioux Tribes v. Kneip,* 430 U.S. 584, 597 (1976), *quoting* Mr. Justice (then judge) Holmes in *Johnson v. United States,* 163 F. 30, 32 (CA1 1908). This Court has repeatedly found that legislative history is a *necessary guide* to construction of ancient Indian statutes. Legislative history *must* be considered to properly construe those statutes:

> "Indian law" draws principally upon the treaties drawn and executed by the Executive Branch and legislation passed by Congress. These instruments which beyond their actual text form the backdrop for the intricate web of judicially made Indian law, cannot be interpreted in isolation but must be read in light of common notions of the day and the assumptions of those who drafted them.

Oliphant v. Suquamish Indian Tribe, 435 U.S. 191, 206 (1978). *See also,* Cohen, *supra:*

> The requirements for how such a "clear and plain" expression of intent must be demonstrated are not definitively articulated in the cases. Although a few cases have required that an intention to modify treaty rights must be stated in the language of the statute, the weight of authority indicates that such

> an intent can also be found by a reviewing court from clear and reliable evidence in the legislative history of a statute.

Cohen, at 223 and *Rosebud Sioux Tribe, supra*, 430 U.S. at 586 ("In determining whether or not the 1889 Reservation boundaries were subsequently diminished by Congressional enactments, we are guided by well-established legal principles. The underlying premise is that congressional intent will control.").

This Court has repeatedly refused to strangle Congressional Acts concerning Indian lands by the constrained construction endorsed below. In *DeCoteau v. District County Court*, 420 U.S. 425 (1975), this Court judicially enforced an agreement authorized by federal statute whereby an Indian Tribe ceded Reservation land to the United States terminating that Reservation. The *DeCoteau* Court closely considered the historical background of the statutes, contemporaneous societal attitudes, the Congressional debates and relevant House and Senate documents. Notably, the majority emphasized that the statute at issue was passed at a time when the U.S. government had altered its policy toward Indian Tribes: "After 1871, the tribes were no longer regarded as sovereign nations, and the government began to regulate their affairs through statute or through contractual agreements ratified by statute." *Id.* at 432. In that same period the Act of 1875 was debated and enacted.

Courts are not free to ignore agreements authorized by Congress because of judicial disagreement with Congressional policy. As this Court held in *DeCoteau:*

> But we cannot rewrite the 1889 Agreement and the 1891 Statute. For the court to reinstate the *entire* reservation, on the theory that retention of mere allotments was ill-advised, would carry us well beyond the rule by which legal ambiguities are resolved to the benefit of the Indians. We give this

> rule the broadest possible scope, but it remains at base a canon for construing the complex treaties, statutes, and contracts which define the status of Indian tribes. A canon of construction is not a license to disregard clear expressions of tribal and congressional intent. *Id.* at 447 (emphasis in original).

In *Rosebud Sioux Tribe,* the Court relied on legislative history to establish congressional intent to diminish, by allotment, the boundaries of an Indian reservation. *Rosebud Sioux Tribe, supra,* 430 U.S. at 584. Although the Allotment Act at issue was contrary to Indian policy at the time of decision, the Court concluded that it was required to decide the case in accord with congressional intent as it was when the Act was passed. *Id.* at 587, citing *Mattz v. Arnett,* 412 U.S. 481, 505 (1973). Further, this Court held that the judiciary could not question that intent nor Congress' motives because "... Congress possessed full power in the matter." *Rosebud Sioux Tribe, supra,* 450 U.S. at 594.

Clearly, the Court did not require some specific magic words in the express terms of the statute to satisfy the requirement that the diminishment of reservation lands be clearly intended by Congress. The Court refused to disturb the justifiable expectations created by the Acts of Congress at issue. *Id.* at 606. Chief Justice Rehnquist declared:

> The intent of Congress in the 1904, the 1907, and the 1910 Acts was to change the boundaries of the original 1889 Rosebud Reservation. Much has changed since then, and if Congress had it to do over again it might well have chosen a different course. But, as we observed in *DeCoteau v. District County Court,* 420 U.S. at 449: "[O]ur task here is a narrow one . . . [W]e cannot remake history."

Id. at 615. *See also, DeCoteau, supra,* 420 U.S. at 449; *Cohen, supra* at 283 and *Cherokee Tobacco v. United States,* 78 U.S. (11 Wall) 616 (1871).

The lower Courts' refusal to consider legislative history, other than in a cursory fasion in dicta,[12] and the findings necessary to the conclusions below, establish the rule of law in the Second Circuit that legislative history *may not be considered* to determine if the Acts of 1875 and 1890 or, indeed, other Indian statutes, waive Indian sovereign immunity. That clearly conflicts with this Court's pronouncements concerning the importance of legislative history to the court's task of construing such legislation.

D. The United States, Lessees And The Seneca Nation Have Relied On The Renewal Clauses In The Acts Of 1875 And 1890 And The Leases Granted Pursuant To Those Statutes.

For more than a century the lessees, the Seneca Nation, and the United States have conducted themselves in all respects as if bound by the provisions of the Acts of 1875 and 1890. The leases granted pursuant to those Acts have been repeatedly enforced by the Seneca Nation against the lessees in the Federal Courts. Congress has itself acted in reliance on the renewal provisions in the Acts of 1875 and 1890 and the 99-year leases.[13]

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[12] In dicta, the Court focused on a single comment by Senator Ingalls to conclude: "[W]e think the legislative history clearly demonstrates that Congress never intended to waive the immunity of the Nation." *Fluent, supra*, 542 F.2d at 546; App. at 9a-10a. In fact Senator Ingalls' comments in full clearly reveal his purpose to create property interests enforceable in a federal forum. *See infra* at Point E.

[13] Because of the pending expiration of the 99-year leases, Congress enacted special legislation to permit HUD to insure mortgages in the City and Villages. Regulations promulgated by the Secretary provide:

"A mortgage on a leasehold estate covering a one to four-family residence located on the Allegany Reservation ... is eligible for insurance if the mortgage meets the requirements of this subpart. ... This section applies only to a mortgage which: Is on a leasehold under a lease with a termination date in February 1991, which

(Footnote continued on following page.)

In *The Seneca People,* by George H.J. Abrams, an enrolled member of the Seneca Nation and an historian and instructor of courses in American Indian History, the author writes:

> Two separate pieces of congressional legislation were signed into law on September 30, 1890. One sold the remaining Kansas lands of the New York Indians. The second provided for a 99-year lease, beginning in 1892 when the leases were to expire, *and an additional renewal period of another 99-years.*

Abrams, *The Seneca People,* Indian Tribal Series/Phoenix (1976) (Library of Congress Catalogue No. 76-19827) (emphasis added).

The language of the Acts of 1875 and 1890 and the leases is very clear concerning the right of renewal possessed by the lessees,[14] However extravagant or pretentious the right of renewal for an additional 99-year term may appear, it arises by principles of law asserted by Congress in the first instance and sustained by practice for more than a century. It is like the situation discussed by Chief Justice John Marshall in *Johnson v. McIntosh*:

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provides for renewal in accordance with the Acts of February 19, 1875 (19 Stat. 330) and the Act of September 30, 1890 (26 Stat. 558)." 24 CFR, ch. 11, §203.43j(a)(2). *See also,* 12 U.S.C. §1709(q). In fact, Congress stated that a mortgagor's failure to take steps to renew his or her lease was "an event of default under the mortgage." 24 CFR §203.43j(b)(2).

[14] Whether the Acts and leases create a renewal right is a question going to the merits which was not decided by the District Court and not at issue on Appeal. Nonetheless, the Second Circuit, in dicta, stated the Acts of 1875 and 1890 did not afford lessees a renewal right. App. at 10a. Lessees submit that the Second Circuit's *dicta* on this point is in error. The leases signed two years *after* the Act of 1890 contain clear renewal clauses which incorporate the Acts of 1875 and 1890. Even the leases unilaterally drafted by the Nation after the *Forness* decision contain such renewal clauses.

> However extravagant the pretention of converting the discovery of an inhabited country into conquest may appear, if a principal has been asserted in the first instance, and afterwards sustained; if a country has been acquired and held under it; if the property of the great mass of the community originates in it, it becomes the law of the land, and cannot be questioned ... However this restriction may be opposed to natural right, and to the usages of civilized nations, yet, if it be indispensable to that system under which the country has been settled, and be adapted to the actual condition of the two people, it may, perhaps, be supported by reason, and certainly cannot be rejected by Courts of Justice.

Johnson v. McIntosh, supra, 8 U.S. at 591-592.

E. The Decisions Below Are Wrong On The Merits.

1. Language of the Statutes and Leases.

The Act of 1875 provides at section seven:

> Section 7. That the courts of the State of New York within and for the County of Cattaraugus, having jurisdiction in real actions, *and the circuit and district courts of the United States in and for the Northern District of said state, shall have jurisdiction* of all actions for the recovery of rents and *for the recovery of possession of any real property within the limits of said villages,* whether actions of debt, ejectment, *or other forms of action,* according to the practice in said court; and actions of forcible entry and detainer, or of unlawful detainer arising in said villages, may be maintained in any of the courts of said county which have jurisdiction of such actions. App. at 121a-122a (emphasis added).

On its face, this creates jurisdiction in the District Court for the Northern District of New York (subsequently transferred to the Western District when that District was created) over all claims regarding the

possession of the leased property regardless of the form of action that claim may take. It does not specify by whom nor against whom such claims will be made. It is not limited by its terms to the lessor or the lessee and does not specify which shall be in the position of plaintiff and which in the position of defendant.

The term "possession" as used in section 7, should be related to the use of the term "possession" in section 3 which provides: "... the persons who may be at such time the owner or owners of improvements erected upon such lands, shall be entitled to such renewed leases, and to continue in *possession* of such lands." App. at 119a. Thus, Section 3 clearly contemplates that lessees have a right to *possession* upon renewal. Count One dismissed below seeks prospective, injunctive relief declaring lessee's right to continued *possession* as provided in the Act of 1875.

Since section 3 clearly creates a right to *possession* in the lessee, it makes no sense at all to confine the same word used in section 7 to the Seneca Nation only. The language of the statute does not require nor justify that result. Rather, the Courts below *implied* a limitation into section 7 restricting it exclusively to actions for *possession* by the Seneca Nation only. In addition to the language in the statute, the leases include clear statements showing that both the Nation and the lessees might have claims for *possession*.[15]

[15] Throughout the lease offered by the Nation after the *Forness* decision, reference is made to the District Court and agreements by the parties to be bound by decisions of the District Court. If a lessee is in default, the lease provides that SNI may re-enter and *possess* the property. It provides for an "action to recover the property." App. at 459a-461a, ¶7. However, within six months after *possession* is awarded to the Lessor, the Lessee may tender rent, the costs of the action and interest and regain the property. The lease provides: "Within 3 months after making the payment or tender, if *possession* has not been delivered, the person who made it or his representative,

(Footnote continued on following page.)

2. History of the Act of 1875.

Senator Ingalls identified the need for legislation confirming the leases:

> I will state to the Senator what the need is. It is because the State of New York, through her tribunals, has determined that legislative action heretofore had by that state attempting to confirm and ratify these leases was invalid from the fact that Congress alone has jurisdiction over Indian affairs.

43rd Congress, Cong. Rec. (1875) at 910 [167a]. (All references to the Cong. Rec. are to the page numbers in the Cong. Rec. followed by the Appendix page number in brackets). Mr. Ingalls continued: "[A]ll that is asked of Congress is to declare that those contracts . . . are valid, *and to provide further for a forum in which differences upon this subject may be litigated and adjudicated.*" *Id.* [168a] (emphasis added). He continued: "[T]here is no attempt whatever to deprive these Indians of their rights, either as a tribe or as individuals, but simply to enable these contracts to be held, ratified and confirmed as binding upon the parties who voluntarily made them. *I should like to inquire if there is any law that would render a contract binding upon a white man and at the same time declare the Indian at liberty to violate it whenever he pleased.*" (emphasis added). *Id.* Mr. Ingalls' comments are especially persuasive since he was a member of the Committee on Indian Affairs which reported the bill to

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may *appeal to the court* for an order that *possession* of the property be delivered to him." *Id.* at ¶7(e). The judge of the W.D.N.Y. is empowered to appoint a 3rd arbitrator in cases where the parties cannot agree on a tax value to be used in connection with accelerated rent provisions. App. at 456a-457a, ¶2. The "District Judge aforesaid" shall approve "adequate security" prior to entry by the Lessor on the leased land to remove timber, explore for gas, minerals, etc. App. at 459a, ¶5.

the Senate. He noted: "[*A*]*s the law now stands, when these difficulties arise, there is no forum where these questions can be adjudicated.* Therefore, these men * * * are entirely at the mercy or caprice of the Indians or of white men who many desire to obtain the property heretofore held by other lessees. . . ." *Id.* [169a-170a] (emphasis added).

That is the harm which the Act of 1875 was designed to remedy, and that is the situation which the Act of 1875, and specifically Sections three and seven thereof, corrected. The Senator from Iowa, Mr. Allison, declared that the Act: "[s]imply authorizes the people who have gone on there [the Allegany Reservation] under a mistaken notion of the law to have all the improvements they have made there confirmed by the action of Congress, so far as it has authority to ratify them; *and whatever questions of dispute may arise, either under this law or any provision made between the Indians and these settlers, shall be adjudicated in the United States Courts.*" Cong. Rec. at 913 [187a-188a]. Mr. Allison continued that "both parties are remedyless unless there is some authority conferred by act of Congress." *Id.* [189a].

Senator Morrill of Maine, also a member of the Committee on Indian Affairs that reported the bill to Congress, stated: "Now what does this bill propose to do? *This bill proposes simply to step in and say that these leases are valid and may be maintained in the courts.*" Cong. Rec. at 916 [204a] (emphasis added).

Senator Hager who argued *against* the Act of 1875 acknowledged that the Act would confer jurisdiction over the Nation with respect to lease questions: ". . . [*Y*]*ou impose upon them* [*Indians*] *these burdens, that they must necessarily go into the courts of justice with their lawyers, with their witnesses, and be subjected to all the expense that may be necessary to protect their rights if this bill shall go into operation.*" Cong. Rec. at 918 [219a] (emphasis added).

In addition to the Congressional debates, there are numerous House and Senate documents contemporaneous with the legislature's consideration of the Act of 1875. House Report No. 478 is a report from the Committee on Indian Affairs. App. at 296a-308a. The Committee found that the Nation freely leased the land to the settlers. App. at 298a. It noted:

> *The Indians do not desire that these villages should be removed or broken up, or that these leases should be canceled,* but on the other hand, they profess to be willing to carry out all their leases according to their terms; and if they object to a law confirming them, or authorizing new ones to be made, it is because, being simple in their ideas of individual property, *they do not appreciate the importance which a white man attaches to having his contract not only legal but capable of being enforced by law.* App. at 300a (emphasis added).

The Committee concluded:

> *Under this state of the case* [*declared invalidity of the leases*], the residents in these villages have no remedy whatever against wrong-doers and trespassers. They can neither collect rents nor expel delinquent tenants. They are, moreover, exposed to the danger of being removed, with entire loss of their property, whenever any designing person shall incite the Indians to demand a strict enforcement of their treaty-rights.
>
> Their only dependence now is in the well-known and long-acknowledged high sense of honor of the Seneca Indians.
>
> *The Committee feel that such a state of things ought not longer to be permitted to exist, and that it is just and right that Congress should ratify and confirm the free and voluntary contracts of their Indian wards, made in good faith and for a sufficient consideration. *** They think it just and safe to give them power to lease their lands if they chose, and, having done so, the law should give validity to their acts.* App. at 300a-301a (emphasis added).

Attached to the Committee Report were petitions and remonstrances that were filed with the Committee. A petition by the officers and members of the National Council of the Seneca Nation of Indians objected to any Act which would alienate the land and give it to the settlers in Salamanca and the Villages. App. at 305a-308a. Indeed, Congress several times proposed to do that but was thwarted because it could not extinguish the Ogden Land Company's title.

A Protest was filed on June 3, 1874 by the President, Councilors and People of the Seneca Nation. *See* Senate Misc. Doc. No. 122, App. at 311a-313a. That reveals that the Seneca Nation objected to the Act of 1875 insofar as it ratified leases granted by *individual* members of the Nation. The Nation wanted only leases granted by the Seneca Nation through its Council to be validated and not those granted by individual Nation members. App. at 312a-313a.[16]

Finally, the Seneca Nation protested the jurisdictional grant in the Act:

> *That such an act would compel Indians to go into the courts of the United States, or of the State of New York,* to obtain possession of their lands if a white man disputed it, *as those tribunals would have sole jurisdiction to try all questions of right to your petitioners' land.* App. at 313a (emphasis added).

Thus, even the Seneca Nation, through its Council, understood that the meaning and import of the Act of 1875 was to confer jurisdiction on the federal court to hear and determine claims concerning the possession of the leased premises and to: "try all questions of right to your petitioners' land." *Id.*

[16] *See also,* Senate Misc. Doc. No. 71, a Memorial of the Indians of Cattaraugus and Allegany Reservations dated February 3, 1874. App. at 317a-319a. That Memorial makes it clear that the Seneca Nation objected to confirmation of leases granted by individual Indians and not to confirmation of leases granted by the Nation through its Councilors.

CONCLUSION

The decisions below establish dangerous precedent that Congressional Acts affecting citizens' fundamental rights may be immunized from judicial review if they also concern Indian affairs. The decisions below are uniquely destructive of judicial review and lessees' fundamental, constitutional right to have access to the Courts of the United States to declare, enforce and adjudicate federal statutes. An intolerable conflict exists between the Tenth and Second Circuits concerning a non-Indian's right of access to a forum. Additionally, the method of construction of Indian Statutes endorsed below is totally contrary to that required by this Court's decisions. Finally, the decisions below wrongly interpreted the Acts at issue. For all these reasons Petitioners ask this Court to allow these important issues to be fully briefed and argued by granting their Petition for a Writ of Certiorari.

Dated: Buffalo, New York
June 5, 1991

Respectfully submitted,

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Supreme Court, U.S.
FILED
JUN 10 1991
OFFICE OF THE CLERK

No. 90-1889

IN THE

Supreme Court of the United States

October Term, 1990

JOSEPH FLUENT, Individually and as a representative of the Class of Salamanca Lessees holding 99-year leases from Seneca Nation of Indians; JAMES V. MONGILLO, Individually and as a representative of the class of Salamanca lessees holding 50-year leases from the Seneca Nation of Indians and KEITH MCCLAIN, Individually and as a representative of the class of congressional village lessees holding 99-year leases from the Seneca Nation of Indians; ROBERT ADAMIC, Individually and on behalf of the class of lessees who signed the "40/40 Lease" Tendered by the Seneca Nation of Indians on or about September 4, 1990; MARILYN ADAMIC, Individually and on behalf of the class of lessees who signed the "40/40 Lease" Tendered by the Seneca Nation of Indians on or about September 4, 1990; SALAMANCA COALITION OF UNITED TAXPAYERS, INC., Individually and on behalf of its membership,

Petitioners,

vs.

SALAMANCA INDIAN LEASE AUTHORITY; DAVID FRANZ, Individually and as Attorney for the City of Salamanca Indian Lease Authority; ANTONIO CARBONE, Individually and as Mayor of the

Respondents.

(Additional Respondents continued inside Front Cover.)

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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(Additional Respondents.)

City of Salamanca and also as member of the Salamanca Indian Lease Authority; CITY OF SALAMANCA; PATRICK CALLAGHAN, Individually and as Chairman of the Salamanca Indian Lease Authority; LINDA RYCHCIK, Individually and as member of the Salamanca Indian Lease Authority; HENRY STEFANSKI, Individually and as a member of the Salamanca Indian Lease Authority; OWEN K. PHILLIPS, Individually and as a member of the Salamanca Indian Lease Authority; DANN COLVIN, Individually and as a member of the Salamanca Indian Lease Authority; PAUL TAYLOR; PENNY BUCKLEY; SENECA NATION OF INDIANS,

Respondents.

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APPENDIX A(1)

Decision of the United States Court of Appeals for the Second Circuit Affirming Judgment of the United States District Court for the Western District of New York

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 1300—August Term 1990

(Argued February 19, 1991 Decided MAR 15 1991)

Docket No. 91-7086

JOSEPH FLUENT, Individually and as a representative of the Class of Salamanca Lessees holding 99-year leases from Seneca Nation of Indians; JAMES V. MONGILLO, Individually and as a representative of the class of Salamanca lessees holding 50-year leases from the Seneca Nation of Indians and KEITH MCCLAIN, Individually and as a representative of the class of congressional village lessees holding 99-year leases from the Seneca Nation of Indians; ROBERT ADAMIC, Individually and on behalf of the class of lessees who signed the "40/40 Lease" Tendered by the Seneca Nation of Indians on or about September 4, 1990; MARILYN ADAMIC, Individually and on behalf of the class of lessees who signed the "40/40 Lease" Tendered by the Seneca Nation of Indians on or about September 4, 1990; SALAMANCA COALITION OF UNITED TAXPAYERS, INC., Individually and on behalf of its membership,

Plaintiffs-Appellants,

against

SALAMANCA INDIAN LEASE AUTHORITY; DAVID FRANZ, Individually and as Attorney for the City of Salamanca Indian Lease Authority; ANTONIO CARBONE, Individually and Mayor of the City of Salamanca and also as member of the Salamanca Indian Lease Authority; CITY OF SALAMANCA; PATRICK CALLAGHAN, Individually and as Chairman of the Salamanca Indian Lease Authority; LINDA RYCHCIK, Individually and as a member of the Salamanca Indian Lease Authority; HENRY STEFANSKI, Individually and as a member of the Salamanca Indian Lease Authority; OWEN K. PHILLIPS, Individually and as a member of the Salamanca Indian Lease Authority; DANN COLVIN, Individually and as a member of the Salamanca Indian Lease Authority; PAUL TAYLOR; PENNY BUCKLEY; SENECA NATION OF INDIANS,

Defendants-Appellees.

BEFORE: FEINBERG, TIMBERS and MINER, *Circuit Judges.*

Appeal from judgment entered in United States District Court for the Western District of New York (Arcara, *J.*) dismissing, on the ground of sovereign immunity, claims against the Seneca Nation of Indians to compel lease renewals and dismissing certain other claims against all defendants because the Nation is an indispensable party as to those claims.

Affirmed.

JENNIFER A. COLEMAN, Buffalo, NY (Iris B. Schifeling, Damon & Morey, Buffalo, NY, of counsel), *for Plaintiffs-Appellants.*

DOUGLAS B.L. ENDRESON, Washington, D.C. (Reid, Peyton, Chambers, Sonosky, Chambers, Sachse & Endreson, Washington, DC, Michael Brady, Hagerty, Brady, Buffalo, NY, of counsel), *for Defendant-Appellee Seneca Nation of Indians.*

R. WILLIAM STEPHENS, Buffalo, NY (David M. Franz, Raichle, Banning, Weiss & Stephens, Buffalo, NY, of counsel), *for Defendants-Appellees other than Seneca Nation of Indians.*

MINER, *Circuit Judge*:

Plaintiffs-Appellants Salamanca Coalition of United Taxpayers, Inc. ("SCOUT"), representing nearly 600 lessees, and five individual lessees (collectively "Appellants") commenced this action against their lessors, the Seneca Nation of Indians ("Nation"), and against the Salamanca Indian Lease Authority ("SILA"), the City of Salamanca ("City") and various City officials to compel the Nation to renew their leases for up to 99 years. Other relief was sought, including a declaration that the agreement negotiated by SILA, the City and the Nation for renewal of the leases was null and void. The Appellants also challenged the constitutionality of the Seneca Nation Settlement Act of 1990, by which Congress approved the agreement for renewal of the leases and appropriated $35 million toward the rental

payments. The district court dismissed all claims against the Nation, finding that the Nation was immune from suit. It also dismissed two claims against the remaining defendants on the ground that an adjudication of those claims in the absence of the Nation would impede the Nation's ability to protect its interest in the subject of those claims. We hold that the district court correctly found that the Nation was immune from suit under the doctrine of sovereign immunity and properly dismissed the other two claims against the remaining defendants under Fed. R. Civ. P. 19.

BACKGROUND

The dispute giving rise to this action involves the renewal of leases to tribal lands within the City and outlying villages, known as the Congressional Villages. The tribal lands were leased by the Nation in the mid-nineteenth century to various settlers and railroads. The leases were validated by Congress in the Act of February 19, 1875, ch. 90, 18 Stat. 330 ("1875 Act"). When they were about to expire, the leases were renewed in accordance with the terms of the Act, first in 1880 for a 12-year term, then in 1892 for a 99-year term, *see* Act of September 30, 1890, ch. 1132, 26 Stat. 558 ("1890 Act") (amending the 1875 Act and authorizing 99-year renewal term). The leases subject of this action all expired on February 19, 1991.[1]

---

[1] In 1939, many of the leases were cancelled by the Nation for failure to pay rent. *See United States v. Forness*, 125 F.2d 928 (2d Cir.), *cert. denied*, 316 U.S. 694 (1942). The Nation offered new leases to the lessees whose leases were cancelled, and those leases, the longest of which had a term of forty-nine years, also expired on February 19, 1991. Some of the original leases expire at various times from about 2029 and 2034.

SILA was formed in 1969 pursuant to New York legislation authorizing it to negotiate a master lease with the Nation for all reservation lands located within the City and the surrounding villages. N.Y. Pub. Auth. Law §§1790-99 (McKinney 1981 & Supp. 1991). The Nation refused to negotiate a master lease, preferring instead to negotiate individual leases with each lessee. SILA then sought and received authorization from an overwhelming majority of lessees, whose leases were about to expire, to negotiate on their behalf. Over the course of some twenty years, SILA, the City and the Nation endeavored to negotiate an agreement to renew the leases. In mid-July, 1990, the parties signed a renewal agreement ("Agreement"). That Agreement provided for leases with a forty-year rental term and a right to renew for an additional forty years ("40/40 leases"). Rents were based on the fair market value of the land rather than on the value of the land and the improvements. The Nation originally had requested rentals based on the value of the land as improved in light of the "unconscionably" low rent it had received during the past 99 years. *See United States v. Forness*, 125 F.2d 928, 941 (2d Cir.), *cert. denied*, 316 U.S. 694 (1942). One of the conditions of the Agreement was payment by the federal government and New York State of monies approximating the difference between the fair market rental value and the rents actually received by the Nation over the past 99 years. Congress enacted the Seneca Nation Settlement Act of 1990, Pub. L. No. 101-503, 104 Stat. 1292 ("1990 Act"), in which it agreed to pay approximately $35 million. 1990 Act, §6, 104 Stat. at 1295-96. Apparently, New York State has agreed to pay $25 million, and, according to the Nation, legislation appropriating that amount is anticipated shortly. The total annual rental payment due from the lessees themselves on the new leases was set at

$800,000, to be collected and paid by the City. That amount is subject to adjustment based on a yearly reappraisal of individual land values. Each lessee is responsible for an annual rent equal to eight percent of land value, if the property is leased for residential purposes, and ten percent of land value, if the property is leased for nonresidential purposes.

After reviewing the Agreement and the 40/40 leases, the Appellants notified the Nation that they were dissatisfied and would institute a lawsuit. On November 30, 1990, the Appellants commenced this action. In the first cause of action in their complaint, they sought a declaration that they are entitled to a renewal of up to 99 years in accordance with the Acts of 1875 and 1890 and the terms of their expired leases. They also claimed in the first cause of action that section 3 of the 1875 Act and the terms of their expired leases entitle them to arbitration for a determination of fair rent. In the eighth cause of action, asserting that SILA lacked authority to negotiate an agreement for the renewal of leases on their behalf, the Appellants sought a declaration that the Agreement was null and void. Additionally, in the tenth cause of action, the Appellants challenged the constitutionality of the 1990 Act. The Nation moved to dismiss all claims against it on the ground of sovereign immunity and moved to dismiss the eighth and tenth causes of action against the other defendants on the ground that it was an indispensable party as to those two causes of action. *See* Fed. R. Civ. P. 19(b). On January 25, 1991, the district court granted the motion and dismissed all claims pleaded against the Nation and also dismissed the eighth and tenth causes of action set forth in the complaint.

The district court concluded that the Nation is immune from suit under the doctrine of sovereign immunity because the 1875 Act did not waive in unequivocal terms the Nation's sovereign immunity. Finding that any declaration that the Agreement was void would greatly affect the interests of the Nation as a party to that Agreement, the court dismissed the eighth cause of action also. Finally, because the 1990 Act authorizes the payment of a substantial sum of money to the Nation, the court found that a constitutional challenge to the 1990 Act, the tenth cause of action, could not be adjudicated in the absence of the Nation without impairing the Nation's ability to protect its interest in the receipt of those funds. The court entered its order as a final judgment against the Nation under Fed. R. Civ. P. 54(b) because of the imminent expiration of the leases. This appeal followed.

DISCUSSION

The Appellants contend that the district court erred by dismissing the claims against the Nation on the ground of sovereign immunity, primarily because section 7 of the 1875 Act provides for jurisdiction over claims regarding the possession of leased property. They point to actions enumerated by the Act over which the court "shall have jurisdiction." Section 7 provides in material part

> [t]hat the . . . circuit and district courts of the United States in and for the northern [now western] district of [New York], shall have jurisdiction of all actions for the recovery of rents and for the recovery of possession of any real property within the limits of said villages, whether actions of debt, ejectment, or other forms of action, according to the practice in said courts; and actions of forcible entry and detainer, or of unlawful detainer arising in said villages, may be maintained in any of the courts of said county which have jurisdiction of such actions.

The Appellants interpret this provision as authorizing actions by both lessors and lessees. Likewise, they point to section 3 of the Act of 1875, which provides that persons who are the "owners of improvements erected upon such lands, shall be entitled to such renewed leases, and to continue in possession of such lands," to support their contention that, since lessees are entitled to possession upon renewal, Congress intended to waive the Nation's immunity and to provide a forum for the resolution of disputes pertaining to possession. We disagree with Appellants' construction of the statute.

"Indian tribes have long been recognized as possessing the common-law immunity from suit traditionally enjoyed by sovereign powers." *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978); *see Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe*, No. 89-1322 (Feb. 26, 1991) (1991 WL 21371 at *3). However, tribal sovereignty is subject to Congress' plenary control, and thus "Congress [is] always . . . at liberty to dispense with . . . tribal immunity or to limit it." *Id.*, 1991 WL 21371 at *4; *see, e.g., Martinez*, 436 U.S. at 58; *United States v. United States Fidelity & Guaranty Co.*, 309 U.S. 506, 512 (1940); *Turner v. United States*, 248 U.S. 354, 358 (1919); *John v. City of Salamanca*, 845 F.2d 37, 40 (2d Cir.), *cert. denied*, 488 U.S. 850 (1988). It has long been the rule that waiver of tribal immunity cannot be implied but rather must be "unequivocally expressed." *Martinez*, 436 U.S. at 58-59 (citations omitted). We agree with the district court that section 7 fails to unambiguously express Congress' intent to subject the Nation to lawsuits concerning disputes over the lease of tribal lands. *See United States v. Charles*, 23 F. Supp. 346, 348-49 (W.D.N.Y. 1938) (action to set aside deed held barred by sovereign immunity of the Seneca Nation of Indians).

Section 7 enumerates actions typically brought by lessors, including actions for the recovery of rents and of possession of real property and actions for debt, ejectment, forcible entry and detainer and unlawful detainer. Each enumerated action provides a remedy for the Nation against defaulting lessees. The fact that only a strained reading of the statute might permit specific forms of action to be brought by tenants against their landlords serves to underscore the absence of a clear expression of a waiver of the kind urged by the Appellants. *Cf., Dellmuth v. Muth,* 109 S. Ct. 2397, 2401 (1989). When Congress has chosen to limit or waive the sovereign immunity of Indian tribes, it has done so in clear language. *See, e.g.,* Act of July 22, 1958, Pub. L. No. 85-547, §1, 72 Stat. 403, 403 (authorizing Navajo and Hopi tribes "to commence or defend . . . an action against each other"); Act of December 22, 1974, Pub. L. No. 85-547, §1, 72 Stat. 403, 403 (authorizing Navajo or Hopi "tribe[ ] is . . . hereby authorized to commence or defend . . . an action against the other tribe."). Because a congressional waiver was not "unequivocally expressed," we may not hold that the statute relied upon by the Appellants waives the sovereign immunity of the Nation. *See Martinez,* 436 U.S. at 58-59.

Regarding the Appellants' contention that the legislative history supports their position that Congress intended to provide a forum for all lease disputes, the need to resort to legislative history similarly highlights the deficiency of the Appellants' position. "If Congress' intention is 'unmistakably clear in the language of the statute,' recourse to legislative history will be unnecessary; if Congress' intention is not unmistakably clear, recourse to legislative history will be futile." *Dellmuth,* 109 S. Ct. at 2401. Nevertheless, we think the legislative history

clearly demonstrates that Congress never intended to waive the immunity of the Nation. The following remarks of Senator Ingalls, a proponent of the bill, indicate the basic purpose of the 1875 Act: "[The 1875 Act] simply proposes that the leases which have been made by these Indians themselves, by their own consent, shall be ratified and confirmed, and held to be valid and binding upon the parties who have voluntarily made these contracts." 3 Cong. Rec. 909-10 (1875). The legislation was proposed in light of a decision by the New York State Supreme Court, in which the court found the leases to be invalid because they were executed without the authorization of the United States. *See Forness,* 125 F.2d at 930-31 & n.1. Thus, the overriding purpose of the 1875 Act as to validate the existing leases voluntarily entered into between the Nation and the settlers.

Even assuming we were to agree with the Appellants' contention that the 1875 Act unmistakably and clearly waives the immunity of the Nation, we would affirm the district court's judgment on the ground that the renewal provisions of 1875 Act applied only to the original renewals and do not extend to the present renewals. Section 3 of the 1875 Act validated leases existing at that time for a five-year term and authorized a term of renewal "not exceeding twelve years." The 1875 Act also provided that "whenever any lease shall expire after its renewal . . ., it may, at the option of the lessee, his heirs or assigns, be renewed in the manner hereinbefore provided." The 1890 Act amended the 1875 Act to allow renewal for "a term not exceeding ninety-nine years, instead of the term of twelve years." Thus, the leases that expired on February 19, 1991 are leases that previously were renewed a second time for a term of 99 years. The 1875 Act does not authorize a perpetual renewal, and without clear language to that effect, we

will not construe the statute to confer such a right. *See Winslow v. Baltimore & Ohio R.R. Co.*, 188 U.S. 646, 654-55 (1903) (plain language necessary to establish intent to provide right of perpetual renewal); *McLean v. United States*, 316 F. Supp. 827, 829 (E.D. Va. 1970) ("[t]he intent to create a perpetual lease must appear in clear and unequivocal language"); *McMillan v. Malvern Gravel Co.*, 136 F. Supp. 567, 574 (W.D. Ark. 1955) (same); 50 Am. Jur. 2d *Landlord & Tenant* §1171 (1970).

The Appellants contend that the 1875 Act "stands ready to resolve this lease dispute in a fair and equitable way. It provides for renewal and then negotiation or binding arbitration for the rent and conditions of the renewal lease." Undoubtedly, the 1875 Act provided for the validation of leases and for arbitration in the event the parties could not agree to the terms of the renewal leases. The Appellants, however, already benefitted from the renewal and arbitration procedures set forth in the 1875 Act, first in 1880 and then in 1892. That is all the statute requires.

Nor do the terms of the expired leases provide that the Nation must accede to the Appellants' proposals for renewal. The expired leases allow for the parties to agree on terms of renewal. The Nation did not agree to a 99-year term of renewal. Instead, it agreed, along with the City and SILA, which represents about two thousand lessees, to a forty-year rental term with a forty-year right to renew. The 40/40 leases provide that disputes "concerning any party's compliance with or obligations under any of the terms" of the lease can be submitted to arbitration. The new leases satisfy the requirements of the statute and the expired leases in that they represent an agreement by the parties.

The Appellants' contention, that tribal immunity does not bar federal jurisdiction when no other forum is available for the resolution of claims, must fail. The lack of a forum does not automatically prevent dismissal of the claims asserted. *Makah Indian Tribe v. Verity,* 910 F.2d 555, 560 (9th Cir. 1990). "Sovereign immunity may leave a party with no forum for [that party's] claims." *Id.* (citing *Lomayaktewa v. Hathaway,* 520 F.2d 1324, 1326 (9th Cir. 1975)). The only branch with the ability to provide a forum for resolution of the issues involved here is Congress. Without a clear congressional mandate, however, we cannot grant the relief sought by Appellants.

The argument that the court erred in dismissing from the complaint claims in which the Appellants sought a judicial declaration that the Agreement was null and void and that the 1990 Act was unconstitutional is without any merit. The Nation moved to dismiss these claims (the eighth and tenth causes of action) pleaded against it and the remaining defendants, pursuant to Fed. R. Civ. P. 19(b). After engaging in the analysis required by Fed. R. Civ. P. 19(a), the district court concluded that any resolution of those particular claims would, as a practical matter, both impair and impede the Nation's ability to protect its interest in the Agreement and in receipt of funds authorized by the 1990 Act.

There can be no doubt that the Nation qualifies under rule 19(a) as an indispensable party to these claims. As a party to an Agreement negotiated for over two decades, the Nation's interest in the validity of the lease agreement is significant. *See Crouse-Hinds Co. v. InterNorth, Inc.,* 634 F.2d 690, 701 (2d Cir. 1980) (citing *Lomayaktewa,* 520 F.2d at 1325 ("[n]o procedural principle is more deeply imbedded in the common law

than that, in an action to set aside a lease or a contract, all parties who may be affected by the determination of the action are indispensable"), *cert. denied*, 425 U.S. 903 (1976)); *McClendon v. United States*, 885 F.2d 627, 633 (9th Cir. 1989) (same). Additionally, as the beneficiary of a substantial sum of money from the federal government, it is manifest that the Nation has a vital interest in the constitutionality of the 1990 Act.

After determining that joinder under rule 19(a), while desirable, was not feasible because of the tribe's sovereign immunity, the district court considered the rule 19(b) factors. "[T]he [r]ule allows courts . . . to determine the emphasis to be placed on each consideration according to 'the facts of [the] given case and in light of the governing equity-and-good-conscience test.' " *Associated Dry Goods Corp. v. Towers Financial Corp.*, 920 F.2d 1121, 1124 (2d Cir. 1990) (quoting 7 C. Wright & A. Miller, Federal Practice & Procedure §1608, at 91-92). It has been held that when an indispensable party is "immune from suit, 'there is very little room for balancing of other factors' set out in [r]ule 19(b), because immunity ' "may be viewed as one of those interests 'compelling by themselves.' " ' " *Enterprise Mgmt. Consultants, Inc. v. United States ex rel. Hodel*, 883 F.2d 890, 894 (10th Cir. 1989) (quoting *Wichita & Affiliated Tribes of Oklahoma v. Hodel*, 788 F.2d 765, 777 n.13 (D.C. Cir. 1986) (quoting 3A Moore's Federal Practice 19.15 at 19-266 n.6 (1984)); *see Provident Tradesmens Bank & Trust Co. v. Patterson*, 390 U.S. 102, 119 (1968). The rationale behind the emphasis placed on immunity in the weighing of rule 19(b) factors is that the case is not one "where some procedural defect such as venue precludes litigation of the case. Rather, the dismissal turns on the fact that society has consciously opted to shield Indian tribes from suit without congressional or

tribal consent." *Wichita*, 788 F.2d at 777. After recognizing the "paramount importance accorded the doctrine of sovereign immunity under [r]ule 19," the district court found that the eighth and tenth causes of action should not be adjudicated in the absence of the Nation. We agree and hold that the district court did not abuse its discretion in dismissing the eighth and tenth causes of action.

CONCLUSION

The judgment of the district court dismissing the claims against the Nation and dismissing the first, eighth and tenth causes of action of the complaint is affirmed. Our order of February 14, 1991 directing that the status quo be maintained pending further order of the court is rescinded.

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United States Court of Appeals
FOR THE SECOND CIRCUIT

Second Circuit Rule 27(a) governing use of this form is reprinted on reverse of Page 2. Note requirements that supporting affidavits be attached.

ORIGINAL

JOSEPH FLUENT, et al.

- v -

SALAMANCA INDIAN LEASE AUTHORITY, et al.

Use short title

91-7086

Docket Number

NOTICE OF MOTION

state type of motion

for expedited hearing of Appeal

MOTION BY: *(Name, address and tel. no. of law firm and of attorney in charge of case)*

Jennifer A. Coleman
Damon & Morey
298 Main Street
Buffalo, NY 14202
(716) 858-3872

OPPOSING COUNSEL: *(Name, address and tel. no. of law firm and of attorney in charge of case)*

Please see attached sheet

UNITED STATES COURT OF APPEALS
FILED
JAN 31 1991
ELAINE B. GOLDSMITH, CLERK
SECOND CIRCUIT

Has consent of opposing counsel:
- A. been sought? ☐ Yes ☒ No
- B. been obtained? ☐ Yes ☒ No

Has service been effected? ☒ Yes ☐ No

Is oral argument desired? ☐ Yes ☒ No
(Substantive motions only)

Requested return date:
(See Second Circuit Rule 27(b))

Has argument date of appeal been set:
- A. by scheduling order? ☐ Yes ☒ No
- B. by firm date of argument notice? ☐ Yes ☒ No

EMERGENCY MOTIONS, MOTIONS FOR STAYS & INJUNCTIONS PENDING APPEAL

Has request for relief been made below? ☐ Yes ☒ No
(See F.R.A.P. Rule 8) *No jurisdiction to grant relief

Would expedited appeal eliminate need for this motion? N/A ☐ Yes ☐ No

If No, explain why not:

Order of the United States Court of Appeals for the Second Circuit Granting Motion to Expedite, February 5, 1991

A. by scheduling order? ☐ Yes ☒ No

B. by firm date of argument notice? ☐ Yes ☒ No

C. If Yes, enter date: _____

Will the parties agree to maintain the status quo until the motion is heard? ☐ Yes ☒ No

Judge or agency whose order is being appealed:

U. S.District Judge Richard J. Arcara, Western District of New York

Brief statement of the relief requested:

Expedited Appeal

Complete Page 2 of This Form

By: *(Signature of attorney)*

Jennifer A Coleman

Signed name must be printed beneath

Jennifer A. Coleman

Appearing for: *(Name of party)*

Joseph Fluent, et al.

Date

January 29, 1991

Appellant or Petitioner:
☒ Plaintiff ☐ Defendant

Appellee or Respondent:
☐ Plaintiff ☐ Defendant

ORDER

Kindly leave this space blank

UNITED STATES COURT OF APPEALS
FEB 1991
SECOND CIRCUIT

IT IS HEREBY ORDERED that the motion be and it hereby is granted,

subject to the approval of the presiding judge, the matter is set for argument on the 19th day of February, 1991.

The briefs of the appellant and joint appendix shall be filed on or before February 11, 1991, at noon. The briefs of the appellees shall be filed on or before February 14, 1991, at noon.

2/5/91
Date

Previous requests for similar relief and disposition:

No previous requests have been made.

Statement of the issue(s) presented by this motion:

Whether the Seneca Nation of Indians is immune from suit to enforce two Acts of Congress, (the Acts of 1875 and 1890) and renewal clauses in leases granted by the Seneca Nation of Indians to Plaintiffs/Appellants pursuant to those Acts of Congress?

Whether a challenge to the Constitutionality of the Settlement Act of 1990 may proceed even if the Court determines that the Seneca Nation is immune from suit? (Complaint Count Ten)

* See below

Brief statement of the facts (*with page references to the moving papers*):

The leases at issue expire on February 19, 1991. Although the leases and the Acts of 1875 and 1890 provide for renewal of the leases, the Seneca Nation refused to renew the leases. Plaintiffs commenced a class action in the Western District of New York, *inter alia*, enforce those renewal provisions. The Plaintiffs/Appellants claims were dismissed below upon the decision of the Court that the Seneca Nation could not be sued because of the doctrine of sovereign immunity.

* Statement of Issue(s) Cont'd.

Whether a challenge to the validity of an Agreement entered into between the Seneca Nation and the City of Salamanca may proceed even if the Nation is immune from suit? (Complaint—Count Eight)

Summary of the argument (*with page references to the moving papers*):

Plaintiffs/Appellants will argue that the language and legislative history of the Acts of 1875 and 1890 clearly limited the Seneca Nations sovereign immunity with respect to the leasing of its lands in the City of Salamanca and surrounding Congressional Villages and that the Seneca Nation is subject to federal court jurisdiction to determine the lessees' rights to renewed leases pursuant to the Acts of 1875 and 1890.

T 1080
4/90

United States Court of Appeals
FOR THE SECOND CIRCUIT

Each motion must be accompanied by a supportin affidavit.

91 - 7086

Docket Number

FLUENT V. SALAMANCA INDIAN

Use short title

NOTICE OF MOTION

state type of motion

for Injunction maintaining status quo while Appeal is sub judice

MOTION BY: *(Name, address and tel. no. of law firm and of attorney in charge of case)*

Jennifer A. Coleman
DAMON & MOREY
1000 Cathedral Pl. 298 Main St
Buffalo, New York 14202

OPPOSING COUNSEL: *(Name, address and tel. no. of law firm and of attorney in charge of case)*

PER ATTACHED

UNITED STATES COURT OF APPEALS
FILED
FEB 14 1991
ELAINE B. GOLDSMITH, CLERK
SECOND CIRCUIT

Has consent of opposing counsel:		
A. been sought?	☐ Yes	☒ No
B. been obtained?	☐ Yes	☐ No
Has service been effected?	☒ Yes	☐ No
Is oral argument desired?	☒ Yes	☐ No

(Substantive motions only)

Requested return date: Feb. 19, 1991

(See Second Circuit Rule 27(b))

Has argument date of appeal been set:		
A. by scheduling order?	☒ Yes	☐ No
B. by firm date of argument notice?	☐ Yes	☐ No

C. If Yes, enter date: Feb. 19, 1991

EMERGENCY MOTIONS, MOTIONS FOR STAYS & INJUNCTIONS PENDING APPEAL

Has request for relief been made below? ☐ Yes ☒ No
(See F.R.A.P. Rule 8)

Would expedited appeal eliminate need for this motion? ☐ Yes ☒ No

If No, explain why not:

Injunction is required pending decision on expedited Appeal granted 2/5/91.

Will the parties agree to maintain the status quo until the motion is heard? ☐ Yes ☒ No

Judge or agency whose order is being appealed:

Hon. Richard J. Arcara, United States District Court, Western District of New York

Brief statement of the relief requested:

Injunction maintaining the status quo pending determination of this court on Appeal to be argued Feb. 19, 1991 pursuant to an Order of this Court granting Plaintiff's-Appellan Motion for an expedited Appeal.

Complete Page 2 of This Form

By: *(Signature of attorney)*

Appearing for: *(Name of party)*

Appellant or Petitioner: ☒ Plaintiff ☐ Defendant
Appellee or Respondent: ☐ Plaintiff ☐ Defendant

February 12, 1991
Date

Signed name must be printed beneath

Jennifer A. Coleman

ORDER

Kindly leave this space blank

IT IS HEREBY ORDERED that the motion be and it hereby is granted ~~denied~~ to the extent that the status quo shall be maintained pending further order of the Court.

UNITED STATES COURT OF APPEALS
FILED
FEB 20 1991
ELAINE B. GOLDSMITH, CLERK
SECOND CIRCUIT

Wilfred Feinberg
W3 H. Timbers
February 20, 1991 Roger J. Miner
Date Circuit Judge

Order of the United States Court of Appeals for the Second Circuit Granting Injunction to Maintain Status Quo, February 20, 1991

APPENDIX A(3)

Previous requests for similar relief and disposition:

No previous request for this relief has been made. No previous relief was has been sought in the District Court for the reasons set-forth in the attached Affidavit of Jennifer A. Coleman.

Statement of the issue(s) presented by this motion:

Whether an injunction should issue from this Court maintaining the status quo vis-a-vis the expiration of existing 99-year leases which are the subject of the instant Appeal and an option to accept a new lease offered by defendant-Appellee Seneca Nation of Indians, while this Appeal is sub juidice?

Brief Statement of the facts (*with page references to the moving papers*):

The 99-year leases at issue will expire by their terms on February 19, 1991. Jt App. at 26. The option granted by the Seneca Nation to lessees to accept a new lease expires on February 19, 1991. Jt. App. at 37. Whether the Plaintiffs have a right to enforce renewal clauses in their existing leases and in the Acts of Congress passed in 1875 and 1890, or whether such an action is barred by the doctrine of sovereign immunity, is one of the issues to be decided by the instant Appeal. The Court agreed to expedite this Appeal by Order dated February 5, 1991. Oral argument is scheduled for February 19, 1991.

Summary of the argument (*with page references to the moving papers*):

Without an injunction maintaining the status quo while this Appeal is sub judice, the rights which Plaintiffs-Appellants seek to enforce in this action will expire upon expiration of their leases. If this Appeal is determined adversely to the Plaintiffs-Appellants, their only option for a new lease from the Seneca Nation will have expired while this Appeal is sub judice.

APPENDIX B(1)

Order to Show Cause of the United States District Court for the Western District of New York, December 3, 1990

Order to Show Cause—December 3, 1990

(To Be Supplied With Record
From Second Circuit)

APPENDIX B(2)

Scheduling Order RE: Motion to Dismiss and Motion for Temporary Restraining Order of the United States District Court for the Western District of New York, December 19, 1990

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Civ. Action No.: 90-1229A

JOSEPH FLUENT, et al.,

Plaintiffs,

vs.

SALAMANCA INDIAN LEASE AUTHORITY, et al.,

Defendants.

ORDER

IT IS HEREBY ORDERED, that the plaintiffs shall submit a brief in opposition to the Seneca Nation's motion to dismiss and a separate brief in support of the plaintiffs' motion for a temporary restraining order and/or preliminary injunction as to the defendants other than the Seneca Nation by service and filing of same on December ~~12~~ 10, (RJA) 1990; the defendants shall respond to the plaintiffs' briefs by December 17, 1990; and oral argument on the motions shall be held at 10:00 a.m. on December 20, 1990.

DATED: Buffalo, New York
December ~~12~~ 10, 1990

RICHARD J. ARCARA
Hon. Richard J. Arcara
United States District Judge

APPENDIX B(3)

Order Admitting Seneca Nation Counsel *Pro Hac Vice* of the United States District Court for the Western District of New York, December 20, 1990

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Civ. No.: 90-1229A

JOSEPH FLUENT, et al.,

Plaintiffs,

vs.

SALAMANCA INDIAN LEASE AUTHORITY, et al.,

Defendants.

ORDER

MICHAEL A. BRADY, a member of this Court, having moved in open Court pursuant to local Rule 3(h), the admission *pro hac vice* of Douglas Endreson and Reid Chambers, and the Court having duly considered the Motion, it is

ORDERED, that Douglas Endreson and Reid Chambers be admitted *pro hac vice* for the purpose of representing defendant, SENECA NATION OF INDIANS, in this matter.

RICHARD J. ARCARA

Entered: December 20, 1990

APPENDIX B(4)

Decision and Order Denying Temporary Restraining Order of the United States District Court for the Western District of New York, January 8, 1991

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Civ. 90-1229A

JOSEPH FLUENT, et al.,

Plaintiffs,

v.

SALAMANCA INDIAN LEASE AUTHORITY, et al.,

Defendants.

DECISION AND ORDER

INTRODUCTION

The plaintiffs[1] in this action have filed a twelve count complaint against the Seneca Nation of Indians ("SNI"), the City of Salamanca ("City"), the Salamanca Indian Lease Authority ("SILA"),[2] and various officials of the

[1] The plaintiffs consist of five individually named plaintiffs who represent similarly situated lessees, and an organization known as the Salamanca Coalition of United Taxpayers, Inc. ("SCOUT") that consists of some 600 lessees. The plaintiffs have brought this suit as a class action.

[2] SILA is a public benefit corporation formed by the State of New York to negotiate and enter into a master lease with the SNI "for any and all reservation lands underlying the City of Salamanca)." N.Y. Pub. Auth. L. §§1791, 1794. SILA was also given the power to "confer with lessees of property for the purpose of negotiating renewals of leases . . . ." N.Y. Pub. Auth. L. §1794(b).

City and SILA. The plaintiffs are lessees of land owned by the SNI. Most of those leases ("the 99 year leases") expire on February 19, 1991; the balance ("the 50 year leases") expire at various times from about 2026 to 2034.

The plaintiffs moved for a temporary restraining order/preliminary injunction against SILA and its members that would prevent SILA's future operation and any further use by SILA of City funds and resources. After reviewing the written submissions of the parties, and hearing oral argument from counsel, the Court denies plaintiffs' motion for injunctive relief against SILA for the reasons stated herein.

FACTS

Over the past several years, the City and SILA have represented the lessees in negotiations with the SNI regarding the terms of renewal of the leases. On July 12 and 13, 1990, the SNI and the City executed a renewal agreement ("the Agreement"). (*See* Exhibit J of the complaint.) The Agreement provided that the SNI would offer all existing lessees a new lease, with a 40 year term and a right to renew for 40 additional years. The Agreement also called for rentals based on land value. Furthermore, under the Agreement, the offer of the new 40/40 lease, would only be effective if: (1) Congress passed an act to implement the Agreement and pay the SNI $35 million; and (2) the State agreed to pay the SNI $25 million. The $60 million in payments represented an agreed upon difference between the lease rentals actually received by the SNI for the past 99 years, and fair market rental for that period.

Subsequently, Congress enacted the required federal legislation implementing the Agreement, authorizing the federal payment and providing for the State payment to

be made. President Bush signed the legislation on November 3, 1990. *See* Seneca Nation Settlement Act of 1990, Pub. L. No. 101-503 (the "Act of 1990"). The State has not yet entered into an agreement with the SNI concerning the schedule and mechanism for payment of the $25 million which the Act of 1990 provides for. The State, however, supported the Act of 1990, stated it would provide the payment and, according to the SNI, an agreement with the State is anticipated shortly.

On September 4, 1990, the SNI offered the new 40/40 lease to all those persons who could prove that they were existing lessees. The plaintiffs reviewed the proposed 40/40 lease and were dissatisfied with both the lease and the representation SILA had provided them during negotiations with the SNI.

The plaintiffs have two major points of contention with the proposed 40/40 lease. First, plaintiffs claim that under the Congressional Acts of 1875 and 1890, which authorize the SNI to lease its land, all lessees are entitled to a 99 year term of renewal. Second, the plaintiffs claim that the Acts of 1875 and 1890 mandate a specific procedure, akin to binding arbitration, for determining rentals and that this procdeure has not been followed.

On or about November 2, 1990, several hundred lessees wrote to the SNI asking it to honor their claimed right to a 99 year renewal of their leases. (*See* Exhibit C of the complaint.) The SNI responded by letter dated November 9, 1990, stating that the SNI would withdraw the option to accept the 40/40 lease from any lessee who tried to enforce renewal rights by litigation or arbitration. (*See* Exhibit D of the complaint.)

Contemporaneously, several hundred lessees also tendered a letter to SILA dated November 2, 1990, revoking formal written authorizations they had

previously given SILA to negotiate on their behalf.[3] (*See* Exhibit O of the complaint.) SILA acknowledged receipt of these letters by a letter dated November 14, 1990. (*See* Exhibit P of the complaint.) For some unexplained reason, however, the November 14, 1990 letter also told those lessees who had revoked SILA's authorization that SILA would pass on their names to the SNI as having rejected the 40/40 lease. The November 2, 1990 letters revoking SILA's authorization, however, did not even mention the 40/40 lease, let alone reject it.

Finally, on November 30, 1990, the plaintiffs brought this action. At the same time, plaintiffs also sought an immediate, *ex parte* temporary restraining order to prevent the SNI, SILA and the City from withdrawing the offer of the 40/40 lease from all lessees who had tendered letters to SILA revoking its authority. The plaintiffs also sought a temporary restraining order or preliminary injunction preventing SILA from continuing its activities.

However, because the Court did not find that "immediate and irreparable injury, loss, or damage" would result to the plaintiffs before the defendants could be heard in opposition, the Court denied plaintiffs' request that the motion for a temporary restraining

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[3] It is important to note that, while the plaintiff/lessees have revoked SILA's authorization, SILA claims to continue to represent and assist approximately 2,000 non-plaintiff/lessees who desire to enter into the 40/40 lease with the SNI. SILA is assisting these non-plaintiff/lessees with the ministerial tasks necessary to finalize their leases. Furthermore, SILA is participating in further negotiations with both the State of New York and the SNI. (*See* Item 9, Callaghan affidavit, filed December 6, 1990, p. 6.)

order be heard *ex parte*.[4] *See* Fed. R. Civ. P. 65(b). The Court issued an order dated December 3, 1990 that set a return date of December 6, 1990 for the motions for temporary restraining orders. The order also instructed plaintiffs to serve all defendants not later than 5:00 p.m. December 5, 1990. Opposing briefs were submitted by all defendants. The SNI also filed a motion to dismiss the action on the ground that: (1) the SNI is immune from suit because of its governmental status; and (2) the action cannot proceed in the SNI's absence because it is an indispensable party under Rule 19 of the Federal Rules of Civil Procedure.

Oral argument was then held on December 6, 1990. At that time, the Court focused on the motion for a temporary restraining order against the SNI. During oral argument, counsel for the SNI stated that the initiation of the instant action had already been treated as a rejection of the 40/40 lease by the named plaintiffs. Counsel further stated, however, that the SNI would not withdraw its offer of the 40/40 lease from the other members of SCOUT or from other lessees who had revoked SILA's authority. In reliance upon this representation, the counsel for the plaintiffs withdrew the motion for a temporary restraining order against the SNI.

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[4] The plaintiffs claimed that the motion should be heard *ex parte* so as to prevent the SNI from revoking their offer of the 40/40 lease prior to the Court hearing the motion for the temporary restraining order. This argument became moot, however, because on the afternoon of November 30, 1990, while the plaintiffs were asking to be heard *ex parte*, a newspaper article appeared in the *Buffalo News* in which plaintiffs' counsel was quoted as saying that plaintiffs were indeed bringing suit against the SNI in federal court. Thus, the SNI was already alerted to the fact that plaintiffs had initiated litigation and, therefore, there was no longer any reason to hear the motion *ex parte*.

The Court then issued a scheduling order for briefing and oral argument on both plaintiffs' motion for a temporary restraining order against SILA and defendant SNI's motion to dismiss. All parties submitted briefs in support of their respective positions and further argument was held on December 20, 1990. Due to time constraints, the Court only heard argument on plaintiff's motion for a temporary restraining order against SILA.[5]

DISCUSSION

The plaintiffs have asked that the following temporary restraining order be issued:

> Restraining and enjoining the defendant Salamanca Indian Lease Authority, the defendant members of the Salamanca Indian Lease Authority and the defendant Franz, and each of them, from engaging in any further activity as the Salamanca Indian Lease Authority, and further restraining defendants, and each of them, from using City funds, offices, letterhead and/or other resources to support or further the activities of the Salamanca Indian Lease Authority.

Although the plaintiffs' motion was denominated as one for a temporary restraining order, a request that is traditionally determined without notice to the opposing party, the Court, in its discretion, ordered notification of the defendants. In view of the notice and opportunity to be heard that were afforded to the parties in this action, the Court considers it appropriate to analyze plaintiffs' motion for a temporary restraining order under the standards governing the granting of preliminary injunctive relief. *Levas and Levas v. Village of Antioch*, 684 F.2d 446, 443 (7th Cir. 1982); *Schiavone Const. Co. v.*

[5] Argument on defendant SNI's motion to dismiss was later held on January 3, 1991.

New York City Transit Auth., 593 F. Supp. 1257, 1261 n.10 (S.D.N.Y. 1984); 11 *Wright & Miller*, §2951 pp. 499-500.

The showing required in order to obtain a temporary restraining order, *i.e.*, irreparable harm and preservation of the status quo, are subsumed by the more extensive showing that must precede the granting of a preliminary injunction. *Granny Goose Foods, Inc. v. Teamsters*, 415 U.S. 423, 439 (1974). It is well established in the Second Circuit that a preliminary injunction or other temporary injunctive relief may be granted only where the plaintiff establishes (1) irreparable harm (if the requested relief is denied), and (2) either (a) the likelihood of success on the merits, or (b) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly in plaintiff's favor. *Tucker Anthony Realty Corp. v. Schlesinger*, 888 F.2d 969 (2d Cir. 1989); *Mattel, Inc. v. Azrak-Hamway Intern., Inc.*, 724 F.2d 357, 359 (2d Cir. 1983); *Jackson Dairy, Inc. v. H.P. Hood & Sons, Inc.*, 596 F.2d 70, 72 (2d Cir. 1979). While this established standard for preliminary injunctive relief does not explicitly mention the "public interest", the Second Circuit has recognized that a federal court, when acting as a court of equity, "may go much further both to give or to withhold relief in furtherance of the public interest than where only private interests are involved." *Standard & Poor's Corp. v. Commodity Exch.*, 683 F.3d 704, 711 (2d Cir. 1982) (*quoting Brown & Williamson Tobacco Corp. v. Engman*, 527 F.2d 1115, 1121 (2d Cir. 1975), *cert. denied*, 426 U.S. 911 (1976)).

In this case, the Court finds that plaintiffs have failed to satisfy of the Second Circuit's two part test for granting a preliminary injunction. First, plaintiffs have

failed to show that they will suffer irreparable harm if the injunction is not granted. Second, the plaintiffs have failed to show either a likelihood of success on the merits or a balance of hardships tipping decidedly in their favor. Furthermore, the Court finds that the granting of the requested relief against SILA would be contrary to the public interest and could cause irreprable harm to those other lessees who are depending on SILA to perform the ministerial duties necessary in order for them to enter into their new leases with the SNI.

THE FIRST PRONG: IRREPARABLE HARM

The Second Circuit has held that:

> To establish irreparable harm, plaintiffs must demonstrate "an injury that is neither remote nor speculative, but actual and imminent." The injury must be one requiring a remedy of more than mere money damages. A monetary loss will not suffice unless the movant provides evidence of damage that cannot be rectified by financial compensation.

Tucker Anthony Realty Corp., 888 F.2d at 975 (citations omitted). "[A] finding of irreparable harm is an *absolute* prerequisite to the issuance of an injunction . . . ." *Fireman's Fund Ins. Co. v. Leslie & Elliott Co.*, 867 F.2d 150, 151 (2d Cir. 1989) (emphasis added).

In this case, the plaintiffs have set forth three arguments as to how they will be irreparably harmed if SILA is allowed to continue its activities. First, plaintiffs argue that they will suffer irreparable injury if SILA continues to deplete city resources. Second, plaintiffs argue that SILA is an unauthorized agency operating in violation of the New York State Constitution and that these constitutional violations constitute *per se* irreparable harm. Third, the plaintiffs argue that they have good reason to believe, based on

SILA's past behavior, that SILA will take actions in the future that will irreparably harm their ability to renew their leases.

While each of these arguments appear different, they are all based on a single underlying argument: that SILA has no authority under the law to either operate or even exist. Plaintiffs fail to show, however, how this fact, if true, would cause them irreparable harm.

Plaintiffs' main argument is that SILA has no valid, legal authority to either operate or exist. Plaintiffs claim that SILA, in the past, has based its authority on three different sources: (1) N.Y. Pub. Auth. L. §5 1791 *et seq.*; (2) agency law; and (3) its position as a City agency. Plaintiffs argue, however, that these sources either no longer exist or never existed in the first instance. First, plaintiffs claim that the New York State statute that created SILA, N.Y. Pub. Auth. L. §§1791 *et seq.*, is both unconstitutional and superseded by federal law. They claim that the statute is unconstitutional because it intrudes on Congress' exclusive jurisdiction in matters dealing with native american indian tribes. Plaintiffs also argue that the statute has been superseded by the Federal Non-Intercourse Act, 25 U.S.C. §177, and the Congressional Acts of 1875 and 1890. Second, plaintiffs argue that SILA lost all of its agency authority when the lessees revoked their prior authorizations. Finally, plaintiffs assert that SILA is not now, nor has it ever been, an authorized City agency. Thus, plaintiffs argue, SILA has no authority, whatsoever, to either operate or exist.

Even if the Court assumes, for the sake of argument, that SILA has no authority, the plaintiffs have failed to demonstrate how this fact, by itself, would cause them irreparable harm. Plaintiffs have been unable to show

what *future* activities of SILA will irreparably harm them. Plaintiffs stated in their brief, and at oral argument, that they have a good faith reason to believe, based on SILA's *past* behavior, that SILA will take actions in the *future* that will irreparably harm them. While the Court can certainly understand and sympathize with the plaintiffs' anger over some of SILA's past conduct, such as SILA's unauthorized rejection of the 40/40 lease on behalf of those lessees who revoked SILA's authorization and SILA's recalcitrance in providing the lessees with requested information, the Court cannot issue a preliminary injunction based on *past* harm. *See Buckingham Corp. v. Karp*, (illegible) F.2d 257, 262 (2d Cir. 1985) ("The linchpin of such interim relief is that threatened irreparable harm will be *prevented* by the injunction.").

Furthermore, SILA has acknowledged in both its November 14, 1990 letter and in open court that it no longer represents those plaintiff/lessees who have revoked their authorizations. Thus, there does not appear to be an actual and imminent threat that SILA will harm the plaintiffs through any future misconduct.

Plaintiffs argue, however, that SILA's future activities in finalizing the 40/40 leases for other lessees, and in negotiating other aspects of the Agreement with the SNI will irreparably harm them. Specifically, plaintiffs' counsel, during oral arguments, pointed to paragraph 10 of the affidavit of Patrick Callaghan, Chairman of SILA. (*See* Item 9, Callaghan Affidavit, filed December 6, 1990, p. 6). In that paragraph Mr. Callaghan states the following:

> 10. The work of the SILA and lease committees of SILA is not at an end. We represent 2000 or more lessees who have not litigated against the lease

proposal and by virtue of the lease negotiations, we have committed to do a great number of things to bring the least proposal in fruition to wit:

(a) The lessee agreeable to the proposed lease must be processed through to an executed lease. This process is under way and involves confirming lease status, descriptions of land, and submission of such information to the SNI.

(b) The SILA is working on projects with the state of New York, the federal government and the county of Cattaraugus to provide financial and other aid to Salamanca in order to fulfill the requisites of the lease package.

(c) A number of legislative changes are in preparation to accommodate the agreed upon lease settlement to the existing law.

(d) the city and SILA have agreed to provide SNI with electric power (for which the SNI will pay) to their adjoining community. The City and SILA have also agreed to attempt to effect a city boundary change to encompass properties totally owed by SNI.

(e) The SILA is the only contact the SNI has with city people to effect the changes required to completely implement the agreed upon lease settlement terms.

Plaintiffs claim that SILA's performance of these tasks will irreparably harm them. At the same time, however, plaintiffs counsel admitted, at oral argument, that it is extremely important that these tasks be carried out, not only to secure the interests of lessees who have not joined the litigation, but to keep open the option of the 40/40 lease for the plaintiffs in case this litigation fails. Instead, plaintiffs assert that it should be the City, rather than SILA, performing these tasks. Thus, plaintiffs' argument is not that the future activities

planned by SILA will irreparably harm them, it is the fact that SILA has no authority to perform these activities that will cause them irreparable injury.

The Court fails to see, however, how the plaintiffs will be irreparably harmed by the fact that SILA, rather than the City, will be performing these activities. Plaintiffs admit that the activities listed by Mr. Callaghan in his affidavit should and must be accomplished in order to protect the interests of *all* lessees. It is clear to the Court that it would make no practical difference whether it is SILA or the City that accomplishes these tasks. If anything, SILA is in a far better position than the City, at this late date, to accomplish these necessary activities.[6] Furthermore, the City funds and resources that SILA will use to accomplish these activities would still be used even if it were the City performing the activities rather than SILA. Thus, the Court finds that the plaintiffs have failed to show how they will suffer irreparable harm if SILA is allowed to continue its activities.

THE SECOND PRONG

The second prong of the Second Circuit's two-prong preliminary injunction test is whether the plaintiff can establish either "(a) the likelihood of success on the merits, or (b) sufficiently serious questions going to the merits to make them a fair ground for litigation *and* a balance of hardships tipping decidedly in plaintiff's

[6] When asked at oral argument who the City would get to accomplish the activities that SILA is currently performing, if the preliminary injunction motion were granted, the City's attorney responded that the City would use the same people who are currently members of SILA. This only makes sense. The members of SILA are the ones most familiar with the Agreement and the activities that need to be done to finalize the 40/40 leases.

favor." *Tucker Anthony Realty Corp.*, 888 F.2d at 972 (citations omitted) (emphasis added). In this case, plaintiffs have failed to demonstrate either a likelihood of success on the merits or a balance of hardships tipping decidedly in their favor.

LIKELIHOOD OF SUCCESS ON THE MERITS

In *Abdul Wali v. Coughlin*, 754 F.2d 1015 (2d Cir. 1985), the Second Circuit stated that, in general, "[a] movant seeking to [show a likelihood of success on the merits] need not show that success is an absolute certainty. He need only make a showing that the probability of his prevailing is better than fifty percent. There may remain considerable room for doubt." *Id.* at 1025. The court further stated, however, that when the grant of injunctive relief will change the positions of the parties as it existed prior to the grant or, in other words, when it will change the *status quo ante*, the "injunction is often deemed mandatory, rather than prohibitory, and a greater showing is required by the moving party." *Id.* (citations omitted). In these circumstances, the injunction should issue "only upon a clear showing that the moving party is entitled to the relief requested or where extreme or very serious damage will result from denial of preliminary relief." *Id.* Finally, the court concluded that a district court should show "greater reluctance to issue a mandatory injunction than a prohibitory injunction." *Id.*

It is clear that in the instant case, any injunction against SILA would change the *status quo*. SILA is currently performing those activities that the plaintiffs want the Court to enjoin. Furthermore, non-plaintiff/lessees, the City and the SNI are all depending

on SILA to continue its activities. Thus, the Court finds that the requested relief is "mandatory" as opposed to "prohibitory."

Because the requested relief is "mandatory," the plaintiffs must make a "clear showing" that they are entitled to the relief requested or that "extreme or very serious damage will result" if the Court denies their motion for a preliminary injunction. *Id.* the Court finds that the plaintiffs have failed to make such a showing.

As stated earlier, the plaintiff's main contention against SILA is that it has no authority under the law to either operate or exist. Plaintiffs have failed, however, to make a "clear showing" that they are likely to succeed on the merits of this argument. At this time, the Court cannot find that the New York statute that created SILA, N.Y. Pub. Auth. L. §§1791 *et seq.*, is "clearly" unconstitutional. Nor, can the Court find that SILA totally lacks any authority under the common law of agency. As stated earlier, SILA claims to represent some 2,000 lessees who have not revoked their authorizations for SILA to represent them. Thus, plaintiffs have failed to make a "clear showing" that SILA has no authority under agency law to continue its activities.

Furthermore, the plaintiffs have been unable to show that "extreme or very serious damage will result from a denial of preliminary relief." *Id.* As stated earlier, the plaintiffs have been unable to show that they will suffer any harm as a result of SILA's continued activities.

In sum, the Court finds that the plaintiffs have failed to meet their burden of showing a likelihood of success on the merits as articulated by the Second Circuit in *Abdul Wali.*

FAIR GROUND FOR LITIGATION AND BALANCE OF HARDSHIPS TIPPING DECIDEDLY IN FAVOR OF THE PLAINTIFFS

While the plaintiffs have failed to show a likelihood of success on the merits, there can be no doubt that there are sufficiently serious questions going to the merits to make them a fair ground for litigation. In order to succeed on this prong of the preliminary injunction test, however, the plaintiffs must also show that the balance of hardships tips *decidedly* in their favor. *See Tucker Anthony Realty Corp.*, 888 F.2d at 972. The Court finds that the plaintiffs have been unable to meet this burden.

First, the plaintiffs have not established what hardships they will suffer if SILA is allowed to continue its activities. Plaintiffs have admitted that the activities that SILA is performing are necessary to keep the 40/40 lease option open for both themselves and the non-plaintiff lessees, and that they want these activities to continue. Their only argument is that the City, rather than SILA, should be the entity performing these activities. As stated earlier, however, the plaintiff's have not demonstrated to the Court how they are caused hardship by the fact that SILA, rather than the City, is accomplishing these activities.

Second, the Court must look at the hardships that other parties might suffer if the injunction is granted. Plaintiffs argue that SILA will not suffer any harm if the preliminary injunction is granted. Plaintiffs, however, focus only on the hardship that SILA, itself, would suffer. The Court, on the other hand, must also take into account the fact that SILA represents other non-plaintiff/lessees.

The possible hardships that the non-plaintiff/lessees could suffer, if the motion for a preliminary injunction is granted, are substantial. These non-plaintiff/lessees, are depending upon SILA to assist them in finalizing their 40/40 leases with the SNI. If SILA is prevented from continuing to assist these lessees, they will virtually have nowhere else to turn. By the time they can locate other legal assistance, assuming they can afford it, the February 19, 1991 expiration date would be upon them.

Furthermore, the Court must also examine the possible hardships that the other defendants in this action might suffer if the preliminary injunction is granted. Certainly, both the City and the SNI would suffer substantial hardships if SILA is prevented from continuing its activities in finalizing the 40/40 leases for the non-plaintiff lessees and assisting in negotiations between the State, the City, and the SNI. Both the City and the SNI are depending on resolution of this matter for the security of their economic futures. Thus, any disruption of SILA's activities at this point could put the economic future of the entire community at risk.

Thus, the Court finds that the balance of hardship does not tip decidedly in plaintiffs' favor. On the contrary, the Court finds that the balance of hardships tips *decidedly* in favor of not granting the preliminary injunction.

PUBLIC INTEREST

As stated earlier, one of the factors the Court may consider when determining whether to issue a preliminary injunction is the "public interest." *See Standard & Poor's Corp.*, 683 F.2d at 711. In this case, the "public interest" factor is extremely important. SILA purports to represent approximately 2,000 lessees

who are not part of this litigation. The Court must take into account the effect that any injunction against SILA would have upon the interests of these lessees. To enjoin SILA from assisting these lessees in finalizing their leases would create tremendous anxiety and uncertainty, not only on the part of the lessees, but also for the community as a whole, including the SNI.

Furthermore, the Court takes notice of the Congress' findings in the Seneca Nation Settlement Act of 1990:

> (1) Disputes concerning leases of tribal lands within the City of Salamanca and the congressional villages, New York, have strained relations between the Indian and non-Indian communities and have resulted in adverse economic impacts affecting both communities.
>
> * * * *
>
> (4) The approaching expiration of the Salamanca and Congressional village leases on February 19, 1991 has created significant uncertainty and concern on the part of the City of Salamanca and Salamanca residents and among the residents of the congressional villages, many of whose families have resided on leased lands for generations.
>
> (5) The future economic success of the Seneca Nation, city and congressional villages is tied to the securing of a future lease agreement.

Accordingly, the Court realizes how important it is for this issue to be resolved. The futures of the lessees, the SNI and the entire community of the City of Salamanca are at stake here. Thus, the Court is reluctant to enjoin SILA from continuing with its activities in helping to resolve this matter.

This is not to say, however, that the plaintiffs should not pursue their legal rights if they so desire. The Court certainly empathizes with the plaintiffs' frustration, anxiety, and fear of losing their homes and businesses. It is quite evident that the plaintiffs feel that SILA did not adequately represent their interests when negotiating with the SNI. They are dissatisfied with the 40/40 lease and believe they are entitled to a 99 year lease with rentals set by binding arbitration. However, if the Court prevents SILA from doing what is necessary to keep the 40/40 lease option open for the plaintiffs, the City, and non-plaintiff/lessees, and the plaintiffs fail in this litigation, the whole situation will be one of complete chaos. Thus, the Court finds that, at this late date, any injunction against SILA would not be in the "public interest" and could cause irreparable harm to all concerned parties.

CONCLUSION

For the reasons stated, the Court denies plaintiffs' motion for a preliminary injunction.

SO ORDERED.

RICHARD J. ARCARA
Richard J. Arcara
United States District Judge

DATED: January 8, 1991

APPENDIX B(5)

Certification Order to New York State of the United States District Court for the Western District of New York, January 9, 1991

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Civ. 90-1229A

JOSEPH FLUENT, et al.,

Plaintiffs,

v.

SALAMANCA INDIAN LEASE AUTHORITY, et al.,

Defendants.

CERTIFICATION ORDER

Pursuant to 28 U.S.C. §2403(b), this Order certifies that the above referenced action filed in this Court November 30, 1990, draws into question the constitutionality of a New York State statute, N.Y. Pub. Auth. L., Art. 8, §§1790 *et seq.* Among the reasons plaintiff allege that the aforementioned law is unconstitutional are: (1) the State of New York by the Supreme Court for Cattaraugus County, in or about the early 1870's, ruled that the State of New York has no authority whatsoever with respect to confirming or authorizing leases by and between the Seneca Nation and persons residing on the Allegany or Cattaraugus reservations; (2) the New York State Public Authorities Law is superseded by numerous federal statutes including: the Act of 1875, the Act of 1890, the Act of

1950 and the Non-Intercourse Act, 28 U.S.C. §177; and (3) the United States Constitution confers exclusive power on Congress to deal with indian land affairs.

A copy of the complaint in this action has been furnished by the plaintiff to Mr. Peter Sullivan, Esq., Assistant Attorney General for the State of New York. Any motion to intervene on behalf of the State of New York should be filed with the Clerk of Court within 30 days of the date of this order.

SO ORDERED.

RICHARD J. ARCARA
Richard J. Arcara
United States District Judge

DATED: January 8, 1991

To: Hon. Robert Abrams, Attorney General
State of New York Department of law
State Capitol, Room 221
Albany, NY 12224

Peter Sullivan, Assistant Attorney General
State of New York Department of Law
68 Court Street
Buffalo, NY 14202

APPENDIX B(6)

Certification Order to United States of the United States District Court for the Western District of New York, January 9, 1991

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Civ. 90-1229A

JOSEPH FLUENT, et al.,

Plaintiffs,

v.

SALAMANCA INDIAN LEASE AUTHORITY, et al.,

Defendants.

CERTIFICATION ORDER

Pursuant to 28 U.S.C. §2403(a), this Order certifies that the above-referenced action, filed in this Court November 30, 1990, draws into question the constitutionality of a United States statute, the Seneca Nation Settlement Act of 1990, Pub. L. No. 101-503. AMong the reasons plaintiffs allege that the Settlement Act of 1990 is unconstitutional are: (1) insofar as the federal statute purports to require the State of New York to tax and spend for a specified purpose, *i.e.*, $25,000,000 restitution to the Seneca Nation, it violates the State of New York's inherent autonomy with respect to taxation, as reserved to the State of New York by the Tenth Amendment of the United States Constitution; (2) the statute violates the taxing and spending clause of the United States Constitution insofar as the due process clauses of the Fifth and Fourteenth Amendments are express

limitations on the power of Congress to tax and spend and plaintiffs allege that the Settlement Act of 1990 would result in a violation of their due process rights; (3) the taxing and spending clause of the United States Constitution is violated insofar as the Settlement Act of 1990 authorizes the appropriation and the expenditure of federal money for a local purpose and not the general welfare of the United States; and (4) the Settlement Act of 1990 is unconstitutional insofar as it relies on the agreement executed in July, 1990 between the City of Salamanca and the Seneca Nation of Indians and related documents, all of which plaintiffs allege are null and void for the reasons set forth in the complaint.

A copy of the complaint has been forwarded by the plaintiffs to the United States Attorney for the Western District of New York. Any motion to intervene on behalf of the United States should be filed with the Clerk of Court within 30 days of the date of this order.

SO ORDERED.

RICHARD J. ARCARA
Richard J. Arcara
United States District Judge

DATED: January 8, 1991

To:
Hon. Dick Thornburgh, Attorney General
United States Department of Justice
Room 5111 Tenth and Constitution Avenue NW
Washington, D.C. 20530

Hon. Dennis C. Vacco
United States Attorney
Assistant United States Attorney
5th Floor U.S. Courthouse
Buffalo, New York 14202

APPENDIX B(7)
Order Withdrawing Temporary Restraining Motion as Against the Seneca Nation of the United States District Court for the Western District of New York, January 9, 1991

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Civ. 90-1229A

JOSEPH FLUENT, et al.,

Plaintiffs,

v.

SALAMANCA INDIAN LEASE AUTHORITY, ET AL.,

Defendants.

SIR/MADAM: Take NOTICE of an ORDER, of which the within is a copy, duly granted in the above entitled action on the 8th day of January, 1991, and entered in the Office of the United States District Court, Western District of New York, on the 9th of January, 1991.

Dated: Buffalo, N.Y.
January 10, 1991

MICHAEL J. KAPLAN, Clerk
United States District Court
Western District of New York
United States Courthouse
Buffalo, N.Y. 14202

cc: Jennifer A. Coleman, Esq.
Douglas B.L. Endreson, Esq. &
Reid Peyton Chambers, Esq.
Michael A. Brady, Esq.
David M. Franz, Esq.
R. William Stephens, Esq.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Civ. No.: 90-1229A

JOSEPH FLUENT, Ind. and as Representative of the Class of Salamanca Leasees Holding 99-year Leases from the Seneca Nation of Indians, et al.,

Plaintiffs,

vs.

SALAMANCA INDIAN LEASE AUTHORITY, et al.,

Defendants.

ORDER

Upon plaintiffs' Agreement to withdraw their Motion dated December 3, 1990 for a Temporary Restraining Order and/or Preliminary Injunction against the Seneca Nation of Indians, seeking an Order requiring the Seneca Nation of Indians to keep open until February 19, 1991, the offer of a new lease extended by the Seneca Nation of Indians to the plaintiffs, it is hereby

ORDERED, that the Motion is withdrawn.

DATED: Buffalo, New York
January 8, 1991

RICHARD J. ARCARA
Hon. Richard J. Arcara

ENTERED:

APPENDIX B(8)

Decision and Order Granting Motion to Dismiss of the United States District Court for the Western District of New York, January 25, 1991

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Civ. 90-1229A

JOSEPH FLUENT, et al.,

Plaintiffs,

v.

SALAMANCA INDIAN LEASE AUTHORITY, et al.,

Defendants.

DECISION AND ORDER

INTRODUCTION

The plaintiffs[1] in this action have filed a twelve count complaint against the Seneca Nation of Indians ("SNI"), the City of Salamanca ("City"), the Salamanca Indian Lease Authority ("SILA"),[2] and various officials of the

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[1] The plaintiffs consist of five individually named plaintiffs who represent similarly situated lessees, and an organization known as the Salamanca Coalition of United Taxpayers, Inc. ("SCOUT") that consists of some 600 lessees. The plaintiffs have brought this suit as a class action.

[2] SILA is a public benefit corporation formed by the State of New York to negotiate and enter into a master lease with the SNI "for any and all reservation lands underlying the City of Salamanca)." N.Y. Pub. Auth. L. §§1791, 1794. SILA was also given the power to "confer with lessees of property for the purpose of negotiating renewals of leases . . . ." N.Y. Pub. Auth. L. §1794(b).

City and SILA. The plaintiffs are lessees of land owned by the SNI. Most of those leases ("the 99 year leases") expire on February 19, 1991; the balance ("the 50 year leases") expire at various times from about 2026 to 2034.

The SNI has moved to dismiss the action on the grounds that: (1) the SNI is immune from suit because of its governmental status; and (2) the action cannot proceed in the SNI's absence because it is an indispensable party under Fed. R. Civ. P. 19.[3]

Plaintiffs argue that Congress expressly waived the SNI's sovereign immunity in Section 7 of the Act of 1875.[4] In the alternative, plaintiffs argue that, even if the Court were to dismiss the SNI, the entire action, with exception of the First cause of action, should be allowed to continue against the non-SNI defendants.

After reviewing the written submissions of the parties and hearing oral argument from counsel, the Court grants the SNI's motion to dismiss. The Court also dismisses the First, Eighth and Tenth causes of action, with respect to all defendants, for failure to join an indispensable party pursuant to Fed. R. Civ. P. 19(b).

FACTS

Over the past several years, the City and SILA have represented the lessees in negotiations with the SNI regarding the terms of renewal of the leases. On July 12 and 13, 1990, the SNI and the City executed a renewal agreement ("the Agreement"). (*See* Exhibit J of the complaint.) The Agreement provided that the SNI would

[3] The other defendants joined in the SNI's Rule 19 motion during oral argument on January 3, 1991.

[4] The plaintiffs argued in their brief that Section 9 of the Act of 1990 also waived the SNI's immunity. Plaintiffs withdrew this argument, however, during oral argument on January 3, 1991.

offer all existing lessees a new lease, with a 40 year term and a right to renew for 40 additional years. The Agreement also called for rentals based on land value. Furthermore, under the Agreement, the offer of the new 40/40 lease, would only be effective if: (1) Congress passed an act to implement the Agreement and pay the SNI $35 million; and (2) the State agreed to pay the SNI $25 million. The $60 million in payments represented an agreed upon difference between the lease rentals actually received by the SNI for the past 99 years, and fair market rental for that period.

Subsequently, Congress enacted the required federal legislation implementing the Agreement, authorizing the federal payment and providing for the State payment to be made. President Bush signed the legislation on November 3, 1990. *See* Seneca Nation Settlement Act of 1990, Pub. L. No. 101-503 (the "Act of 1990"). The State has not yet entered into an agreement with the SNI concerning the schedule and mechanism for payment of the $25 million which the Act of 1990 provides for. The State, however, supported the Act of 1990, stated it would provide the payment and, according to the SNI, an agreement with the State is anticipated shortly.

On September 4, 1990, the SNI offered the new 40/40 lease to all those persons who could prove that they were existing lessees. The plaintiffs reviewed the proposed 40/40 lease and were dissatisfied with its terms.

The plaintiffs have two major points of contention with the proposed 40/40 lease. First, plaintiffs claim that under the Congressional Acts of 1875 and 1890, which authorize the SNI to lease its land, all lessees are entitled to a 99 year term of renewal. Second, the plaintiffs claim that the Acts of 1875 and 1890 mandate

a specific procedure, akin to binding arbitration, for determining rentals and that this procedure has not been followed.

On or about November 2, 1990, several hundred lessees wrote to the SNI asking it to honor their claimed right to a 99 year renewal of their leases. (*See* Exhibit C of the complaint.) The SNI responded by letter dated November 9, 1990, stating that the SNI would withdraw the option to accept the 40/40 lease from any lessee who tried to enforce renewal rights by litigation or arbitration. (*See* Exhibit D of the complaint.)

Finally, on November 30, 1990, the plaintiffs brought this action. The complaint alleges twelve separate causes of action. Only the First, Eighth and Tenth causes of action, however, conceivably affect the SNI.[5]

In the First cause of action, plaintiffs ask for a declaratory judgment that the Acts of 1875 and 1890, and their current 99 year leases, grant them a right to a term of renewal of 99 years, with rent and conditions to be fixed by a procedure provided for in the Act of 1875. The Eighth cause of action asks for a declaratory judgment that the Agreement is null and void because: (1) it violates both the New York State and United States Constitutions; and (2) because the City had no authority, under law, to sign the Agreement. The Tenth cause of action asks for a declaratory judgment that the Act of 1990 is unconstitutional.

DISCUSSION

The SNI's Sovereign Immunity

It has long been recognized that Indian tribes occupy a unique legal status as governmental entities within the United States. *See United States v. Kagama*, 118 U.S. 375, 382 (1886); *Worcester v. Georgia*, 31 U.S. (6 Pet.)

[5] The Sixth cause of action also directly affects the SNI but has been withdrawn by the plaintiffs.

515, 559 (1832). The Supreme Court has declared Indian tribes "unique aggregations possessing attributes of sovereignty over both their members and their territory." *United States v. Mazurie*, 419 U.S. 544, 557 (1975).

Indian tribes, like other sovereigns, possess immunity from suit, except to the extent that their immunity has been expressly waived. The Supreme Court, in *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978), explained tribal immunity from suit as follows:

> Indian tribes have long been recognized as possessing the common-law immunity from suit traditionally enjoyed by sovereign powers. This aspect of tribal sovereignty, like all others, is subject to the superior and plenary control of Congress. But without congressional authorization, the Indian Nations are exempt from suit. * * * It is settled that a waiver of sovereign immunity cannot be implied but must be unequivocally expressed.

Id. at 53 (citations omitted). In *Santa Clara Pueblo*, the Court simply reaffirmed its long standing recognition of the principle of tribal sovereign immunity.[6] *See Turner v.*

[6] Tribal sovereign immunity has been uniformly recognized and applied throughout the lower federal courts as well. *E.g., Makah Indian Tribe v. Vertig*, 910 F.2d 555 (9th Cir. 1990); *Weeks Constr. Inc. v. Oglala Sioux Hous. Auth.*, 797 F.2d 668 (8th Cir. 1986); *Wichita and Affiliated Tribes of Oklahoma v. Hodel*, 788 F.3d 765 (D.C. Cir. 1986); *Jicarilla Apache Tribe v. Andrus*, 687 F.2d 1324, 1344-45 (10th Cir. 1983); *Garreaux v. Andrus*, 676 F.2d 1206 (8th Cir. 1982); *Ramey Constr. Co. v. Apache Tribe of Mescalero Reservation*, 673 F.2d 315 (10th Cir. 1982); *Sekacuaptewa v. MacDonald*, 619 F.2d 801 (9th Cir.), *cert. denied*, 449 U.S. 1010 (1980); *Bottomly v. Passamaquoddy Tribes*, 599 F.2d 1061, 1064-67 (1st Cir. 1979); *California v. Quechan Tribe of Indians*, 595 F.2d 1153 (9th Cir. 1979); *Lomayaktewa v. Hathaway*, 520 F.2d 1324 (9th Cir.), *cert. denied*, 425 U.S. 903 (1975); *Cherokee Nation v. Oklahoma*, 461 F.2d 674 (10th Cir.), *cert. denied*, 409 U.S. 1039 (1972); *Hamilton v. Nakai*, 453 F.2d 152 (9th Cir.), *cert. denied*, 406 U.S. 945 (1971); *Maryland Casualty Co. v. Citizens National Bank*, 361 F.2d 517 (5th Cir.), *cert. denied*, 385 U.S. 913 (1966); *Twin Cities Chippewa Tribal Council v. Minnesota Chippewa Tribe*, 370 F.2d 529 (8th Cir. 1967); *Haile v. Saunooke*, 246 F.2d 293 (4th Cir. 1957); *Thebo v. Choctaw Tribe*, 66 F. 372, 374-76 (8th Cir. 1895).

United States, 248 U.S. 354 (1919); *United States v. United States Fidelity & Guaranty Co.*, 309 U.S. 506, 512-13 (1940). This Court has also recognized this principle. *See e.g., Seneca Constitution Rights Org. v. George*, 348 F. Supp. 48 (W.D.N.Y. 1972); *City of Salamanca v. Seneca Nation of Indians*, 47 F. Supp. 939 (W.D.N.Y. 1942). Indeed, two federal courts of appeal have recently held that lessees of Indian lands cannot sue tribes concerning those leases because of tribal immunity from suit. *McClendon v. United States*, 885 F.2d 627 (9th Cir. 1989); *Jicarilla Apache Tribe v. Hodel*, 321 F.2d 537 (10th Cir. 1987).

Tribal sovereign immunity plays an important practical role in protecting and preserving tribal self-determination: if Indian tribes were subject to suits without their consent, scarce tribal resources—here, tribal lands—would be exposed to the expense of litigation and possible loss. *Cf. Santa Clara Pueblo*, 436 U.S. at 64-65, 67 (discussing the financial impact on tribes that would result from implied right of action against tribal officers). As the Eighth Circuit explained long ago in *Adams v. Murphy*, 165 F. 304, 308-09 (8th Cir. 1908):

> Upon considerations of public policy such Indian tribes are exempt from civil suit. That has been the settled doctrine of the government from the beginning. If any other course were adopted, the tribes would soon be overwhelmed with civil litigation and judgments.

Thus, sovereign immunity is "a necessary corollary to Indian sovereignty and self-governance." *Three Affiliated Tribes v. World Eng'g.*, 476 U.S. 877, 890 (1986) (citations omitted).

In sum, *Santa Clara Pueblo* creates a presumption of tribal sovereign immunity from suit. This immunity can only be waived by Congress and any such waiver must be "unequivocally expressed." *Santa Clara Pueblo*, 436 U.S. at 58. Thus, in this case, in order to avoid dismissal of the SNI, the plaintiffs must demonstrate to the Court that Congress has authorized an "unequivocally expressed" waiver of the SNI's sovereign immunity.

The Act of 1875

The Congressional Act of 1875 provides at Section 7 that:

> Sec. 7. That the courts of the State of New York within and for the county of Cattaraugus, having jurisdiction in real actions, and the circuit and district courts of the United States in and for the northern district of said State, shall have jurisdiction of all actions for the recovery of possession of any real property within the limits of said villages, whether actions of debt, ejectment, or other forms of action, according to the practice in said courts; and actions of forcible entry and detainer, or of unlawful detainer arising in said villages, may be maintained in any of the courts of said county that have jurisdiction of such actions.

Plaintiffs argue that Section 7, on its face, creates jurisdiction in this Court over all claims regarding the possession of the leased property in whatever form or action that claim may be presented to the Court. In support of this position, plaintiffs point out that Section 7 does not specify by whom nor against whom such claims may be made. In other words, it is not limited by its terms to the lessor or the lessee, and does not specify which shall be in the position of plaintiff and which in the position of defendant. Thus, plaintiffs argue, Section

7, by its "plain meaning," creates an "unequivocally expressed" waiver by Congress of the SNI's tribal sovereign immunity. The Court disagrees.

The rule of law applicable here is clear and unambiguous: "a waiver of sovereign immunity cannot be implied, but *must be unequivocally expressed.*" *Santa Clara Pueblo,* 436 U.S. at 58 (emphasis added). There is nothing in Section 7 that "unequivocally expresses" a waiver of the SNI's immunity. The SNI is not even mentioned in Section 7. Nor is their any reference to waiver of the SNI's immunity.

Section 7 authorizes jurisdiction over "all actions" (1) "for the recovery of rents" and (2) for the "*recovery* of possession of any real property within . . . [Salamanca or the congressional villages] whether actions for debt, ejectment, or other forms of action," including "forcible entry and detainer, or . . . unlawful detainer." (emphasis added). The clear purpose of Section 7 is to authorize *the SNI as lessor* to sue lessees who are delinquent, or have breached their leases, for back rent or possession (such as by an action to eject), or for a holder of a valid lease to sue to expel wrongdoers or trespassers interfering with lessee's possession. There is no indication in the language of Section 7 that Congress intended to waive the SNI's immunity from suit and such a waiver "cannot be implied." *Santa Clara Pueblo,* 438 U.S. at 58. Thus, the Court finds that Section 7 of the Act of 1875 does not, on its face, "unequivocally express" waiver of the SNI's sovereign immunity.

Plaintiffs further argue that, even if the statute is not clear on its face, the legislative history of Section 7 and the Act support its position that Congress has waived the SNI's sovereign immunity. This argument fails, however, for two reasons: (1) the meaning of the statute

is clear on its face; and (2) even if the Court were to find that the language of the statute is unclear or ambiguous, the plaintiffs cannot, by definition, satisfy the "unequivocally expressed" test of *Santa Clara Pueblo.*

It is well established that "[i]f Congress' intention is unmistakably clear in the language of the statute, recourse to legislative history will be unnecessary . . . . ." *Dellmuth v. Muth,* 491 U.S. 223, 109 U.S. S.Ct. 2397, 240) (1989). As stated earlier, the Court finds that the clear purpose of Section 7 is to authorize the SNI as lessor to sue lessees for breach of their leases, or for a holder of a valid lease to sue to expel wrongdoers or trespassers. Thus, because the Court finds that Congress' intent is unmistakably clear in the language of the statute, resort to the legislative history is unnecessary.

Even if the Court were to find that Congress' intention is not unmistakably clear, recourse to legislative history will be futile, because, by definition, the "unequivocally expressed" rule of *Santa Clara Pueblo* will not be met. *Cf. Id.* The rule in *Santa Clara Pueblo* is clear; any Congressional waiver of an Indian tribe's sovereign immunity "*cannot be implied* but must be unequivocally expressed." *Santa Clara Pueblo,* 436 U.S. at 58 (emphasis added). Furthermore, it is well established that ambiguities in federal laws dealing with Indians should be resolved in their favor. *John v. City of Salamanca,* 845 F.2d 37, 41-42 (2d Cir.), *cert. denied,* 488 U.S. 850 (1988) (*citing Bryan v. Ithasca County,* 426 U.S. 373, 392 (1976)). Thus, once plaintiffs have to start relying on the legislative history of the Act in making their argument for waiver of the SNI's sovereign immunity, the battle is lost. Congress' intentions to waive the tribe's sovereign immunity must be "unequivocally expressed" by the "plain meaning" of the language in the statute, or else there is no waiver.

Finally, plaintiffs argue that in *John v. City of Salamanca*, 845 F.2d 37 (2d Cir.), *cert. denied*, 488 U.S. 850 (1988), the Second Circuit found that the Act of 1875 abrogated the SNI's sovereign immunity. Specifically, plaintiffs point to the following language in *John*:

> While the Supreme Court has noted that a tribe does not abandon its sovereignty over land simply by leasing it to non-Indians, the precise scope of tribal power over leased land nonetheless is subject to limitation by Congress. * * * We conclude that Congress limited the sovereignty of the Seneca Nation over the reservation land within the City of Salamanca. The plain language of the 1875 Act supports this conclusion.

Id. at 42 (citations omitted). Plaintiffs, however, have taken this language totally out of the context of the facts in that case. It is obvious that *John* is clearly distinguishable from the case at hand.

John involved a suit brought by a member of the SNI against the City of Salamanca claiming that he was exempt from the City's building code with respect to a restaurant he was constructing in the City. John claimed that as an Indian on his own reservation he was exempt from state regulatory control. He did not, however, claim any immunity from suit; he brought the suit. Nor, obviously, did the SNI assert its sovereign immunity as it was not even a party to the suit.

The Second Circuit rejected John's argument and held that Section 8 of the Act of 1875 "expresses Congress' intention to extend ordinances, such as those Salamanca wishes to enforce against John, to the leased land." *Id.* at 40. This holding, however, is limited to the application of *Section 8* of the Act to the facts that were present in that case. *John* did not mention *Section 7* of the Act.

Nor did it decide or discuss the SNI's sovereign immunity from suit. The Court, therefore, finds that *John* is not applicable to the case at hand.

This Court, on the other hand, has specifically held that the SNI is immune from suit under Section 7 of the Act of 1875. *City of Salamanca v. Seneca Nation*, 47 F. Supp. 939 (W.D.N.Y. 1942). In granting a motion to dismiss a suit by the City to enjoin the SNI from attempting to repossess leased land in the City, where the complaint arose "under . . . the Act of Congress of February 19, 1875, Section 7, 13 Stat. 330," Judge Knight held that "this suit cannot be maintained in this court without congressional authorization" and "[s]uch is lacking." *Id.* at 940.

In sum, the Court finds that Section 7 of the Act of 1875 fails to provide an "unequivocally expressed" waiver of the SNI's sovereign immunity. Thus pursuant to *Santa Clara Pueblo*, the Court must grant the SNI's motion to dismiss.

Rule 19

The SNI, along with the other defendants, has also moved for dismissal of this action under Fed. R. Civ. P. 19, in the event that the Court decides, which it has, that the SNI should be dismissed. Obviously, dismissal under Rule 19 of the non-SNI defendants would only be appropriate for those causes of action that could potentially affect the rights and interest of the SNI. As stated earlier, the SNI's interest could only conceivably be affected by the Court's adjudicating the First, Eighth and Tenth causes of action in the SNI's absence. Thus the Court must determine whether the SNI is an indispensable party under Rule 19 with regard to these causes of action only. The rest of the complaint cannot be dismissed under Rule 19.

The plaintiffs argue that, even if the Court finds that the SNI should be dismissed because of its sovereign immunity, the Eighth and Tenth causes of action can still proceed against the other non-SNI defendants because the SNI is neither a necessary nor indispensable party to these causes of action.[7] The Court finds, however, that the SNI is both a necessary and indispensable party under Rule 19 to both the Eighth and Tenth causes of action.

To determine whether a party is indispensable under Rule 19 a court must undertake a two part analysis. First the court must determine whether the party is necessary to the suit under Rule 19(a). If the party cannot be joined, the Court must then determine whether the party is indispensable under Rule 19(b), so that in "equity and good conscience" the suit should be dismissed.

Rule 19 requires joinder of all materially interested parties in a single lawsuit in order to protect interested parties and spare judicial resources. Section (a) of Rule 19 provides:

> A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if
>
> (1) in his absence complete relief cannot be accorded among those already parties, or
>
> (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may
>
> (i) as a practical matter impair or impede the person's ability to protect that interest or

[7] The plaintiffs conceded at oral argument on January 3, 1991 that the SNI is an indispensable party to the First cause of action.

> (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person may be made a party.

If joinder of a section (a) party is not feasible, section (b) of Rule 19 prescribes the test for deciding that the action can still proceed. Such a determination rests in the discretion of the trial judge applying "equity in good conscience" to the facts at hand. Four factors are considered in this exercise of discretion:

> 1. The extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties.
>
> 2. The extent to which, by protective provisions in the judgement by the shaping of relief, or other measures the prejudice can be lessened or avoided.
>
> 3. Whether a judgment rendered in the person's absence will be adequate.
>
> 4. Whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

Not all four factors must be met in order for the Court to proceed. Rather, each factor is evaluated independently and the weight of the various factors balanced by the Court to determine in "equity and good conscience" whether the action may proceed. "[A] court should take a flexible approach in deciding what parties need to be present for a just resolution of the suit." *Jaser v. New York Property Ins. Underwriting Ass'n.*, 815 F.2d 240, 242 (2d Cir. 1987) (citations omitted).

Plaintiffs' Eighth cause of action seeks a declaratory judgment that the Agreement between the City and the SNI is void because the City lacked authority to enter

into the Agreement. The SNI, as a party to the Agreement, has a very strong interest in whether or not the Agreement is valid, and any action in its absence that would determine the validity of the Agreement would, as a practical matter, both impair or impede the SNI's ability to protect that interest.

In general, "no procedural principle is more deeply imbedded in the common law than that, in an action to set aside a lease or a contract, all parties who may be affected by the determination of the action are indispensable." *Jicarilla Apache Tribe*, 821 F.2d at 540; (*citing Lomayaktewa*, 520 F.2d at 1325 (1976)). Indeed, two recent cases have specifically held that where an Indian tribe is a party to a lease agreement that is a subject to a claim, the tribe is an indispensable party and suit may not proceed without the tribe. *McClendon*, 885 F.2d at 633; *Jicarilla Apache Tribe*, 821 F.2d at 540. Thus, the Court finds that the SNI is both a necessary and indispensable party to the Eighth cause of action.

In the Tenth cause of action, plaintiffs seek a declaration that the Settlement Act of 1990 is unconstitutional. The Act of 1990 was Congress' attempt to resolve the dispute surrounding the leases between the SNI and the lessees. The Act of 1990 provides the SNI with a substantial payment of $60,000,000 that represents an agreed upon difference between the lease rentals actually received by the SNI for the past 99 years and the fair market rental for that period. Thus, the SNI has a very strong interest in the constitutionality of the Act of 1990 and any action in its absence to determine the constitutionality of this Act will, as a practical matter, impair or impede the SNI's ability to protect that interest. Furthermore, any judgment rendered in the absence of the SNI would be

greatly prejudicial to both the SNI and the other defendants. The Court, therefore, finds that the SNI is both a necessary and indispensable party to the Tenth cause of action.

Plaintiffs argue that Rule 19 should not operate to bar this suit because the rule only requires joinder of an interested party if his absence would impair or impede his ability to protect his interest. Plaintiffs contend that the SNI need only waive its sovereign immunity and join in the suit to protect its interest. Thus, plaintiffs conclude, since the SNI has the *ability* to protect its interests, the suit may proceed.

In effect, however, plaintiffs' argument would totally destroy Rule 19. Under plaintiffs' argument, any interested party would be able to protect its interest by voluntarily intervening, rendering Rule 19 meaningless and useless. The Tenth Circuit, in fact, considered a similar argument and rejected it:

> To argue ... that [a party] ... can protect its interests through voluntary intervention would render Rule 19(b) almost completely nugatory. A party satisfying Rule 19(a)(2)(i) and yet not joined, thus requiring a Rule 19(b) analysis, would *always* satisfy the prerequisites for intervention as of right under Fed. R. Civ. P. 24(a), which in part allows intervention "when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties." Under [this] ... argument a court could *never* find a Rule 19(a)(2)(i) party indispensable under Rule 19(b), because such a party could always protect his interest by intervening. The purpose of Rule 19, however, is not

> to exhort an interested person to exercise its Rule 24 rights. We decline to adopt an interpretation of Rules 19(a)(2)(i) and 19(b) that completely emasculates them of any meaning.

Navajo Tribe of Indians v. New Mexico, 809 F.2d 1455, 1472 n. 25 (10th Cir. 1987).

In addition, plaintiffs have failed to recognize the paramount importance accorded the doctrine of sovereign immunity under Rule 19. A long line of cases solidly establish that a suit may not proceed if a tribe is an indispensable party under Rule 19 and cannot be joined due to its sovereign immunity. *See, e.g., Makah Indian Tribe*, 910 F.2d at 555; *McClendon*, 885 F.3d at 627; *Enterprise Management Consultants, Inc. v. Hodel*, 883 F.2d 890 (10th Cir. 1989); *Jicarilla Apache Tribe*, 821 F.2d at 537; *Wichita and Affiliated Tribes of Oklahoma*, 788 F.2d at 765; *Lomayaktewa*, 520 F.2d at 1324; *Tewa Tesugue v. Morton*, 598 F.2d 240 (10th Cir. 1974), *cert. denied*, 420 U.S. 962 (1975). As the Tenth Circuit has stated: "When . . . a necessary party under Rule 19(a) is immune from suit, there is very little room for balancing of other factors set out in Rule 19(b) because immunity may be viewed as one of those interests compelling by themselves." *Enterprise Management Consultants*, 883 F.2d at 894 (citations omitted).

In effect, plaintiffs claim a right to bring an action in which the SNI's rights will be determined, regardless of whether or not the SNI has consented or is a party to suit. Such an argument is contrary to the doctrine of sovereign immunity. The whole purpose of sovereign immunity is to enable a sovereign to choose when its rights and liabilities should be determined by the courts. If plaintiffs are allowed to bring suit and determine the SNI's rights in its absence, even though the SNI has not

waived its immunity, the SNI's immunity would be devoid of meaning. "It is wholly at odds with the policy of tribal immunity to put the tribe to this Hobson's choice between waiving its immunity or waiving its right not to have a case proceed without it." *Wichita and Affiliated Tribes of Oklahoma*, 788 F.2d at 776.

Finally, while the Court can sympathize with the fact that the plaintiffs may have no other adequate remedy if this action is dismissed for non-joinder, it is well established that where a tribe is immune from suit as a sovereign, a party may properly be left with no forum for its claims. *Makah Indian Tribe*, 910 F.2d at 555.

In sum, the Court finds that the SNI is both a necessary and indispensable party under Rule 19 with regard to the First, Eighth and Tenth causes of action. Thus, the Court dismisses the First Eighth and Tenth causes of action with respect to all defendants.

CONCLUSION

For the reasons stated herein, the SNI's motion to dismiss is granted. Furthermore, the First, Eighth and Tenth causes of action are dismissed with respect to all defendants.

SO ORDERED.

RICHARD J. ARCARA
Richard J. Arcara
United States District Judge

DATED: January 25, 1991.

APPENDIX B(9)

Order Granting Motion to Shorten Time of the United States District Court for the Western District of New York, January 25, 1991

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Civ. Action No. 90-1229A

JOSEPH FLUENT, et al., Individually and as Representative of the Class of Salamanca Lessees Holding 99-Year Leases from the Seneca Nation of Indians;

Plaintiffs,

vs.

SALAMANCA INDIAN LEASE AUTHORITY, et al.,

Defendants.

ORDER SHORTENING TIME

Upon motion by the plaintiffs pursuant to Rule 6(d) of the Federal Rules of Civil Procedure for an order shortening the time for return of plaintiffs' motion pursuant to Rule 54(b) of the Federal Rules of Civil Procedure;

It is hereby ordered that plaintiffs Motion for an Order Directing Entry of Judgment Pursuant to FRCP 54(b) of the Federal Rules of Civil Procedure shall be returnable before the Court on January 29, 1991 at 2:00 o'clock in the afternoon of that day and that service of this Order

together with the papers upon which it was granted by hand delivery to Michael Brady, Esq., 1010 Chemical Bank Building, Buffalo, New York 14202 and R. William Stephens, Esq., 410 Main Street, Buffalo, New York 14202 shall be deemed good and sufficient service and notice of this Motion and Order.

/s/ JOHN T. CURTIN
United States District Court Judge

APPENDIX B(10)

Order Granting Motion for Rule 54(b) Entry of Final Judgment Dismissing Seneca Nation And Counts One, Eight and Ten of the United States District Court for the Western District of New York, January 29, 1991

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CIVIL 90-1229A

JOSEPH FLUENT, etc., et al.,

Plaintiffs,

vs.

SALAMANCA INDIAN LEASE AUTHORITY, et al.,

Defendants.

SIR/MADAM: Take NOTICE of an ORDER & JUDGMENT of which the within is a copy, duly granted in the above entitled action on the 29th day of January, 1991, and entered in the Office of the United States District Court, Western District of New York, on the 29th day of January, 1991.

Dated: Buffalo, N.Y.
January 29, 1991

MICHAEL J. KAPLAN, Clerk
United States District Court
Western District of New York
United States Courthouse
Buffalo, N.Y. 14202

cc:
R. William Stephens, Esq.
David M. Franz, Esq.
Michael A. Brady, Esq.
Douglas B.L. Endreson, Esq.
Jennifer A. Coleman, Esq.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Civ. 90-1229A

JOSEPH FLUENT, et al., Individually and as Representative of the Class of Salamanca Lessees Holding 99-Year Leases from the Seneca Nation of Indians;

Plaintiffs,

vs.

SALAMANCA INDIAN LEASE AUTHORITY, et al.,

Defendants.

ORDER FOR FINAL JUDGMENT

Defendant Seneca Nation of Indians having moved for an Order Pursuant to Rule 12 of the Federal Rules of Civil Procedure for dismissal of the Complaint on grounds that the Seneca Nation of Indians is immune from suit because of its govermental status; and defendant Seneca Nation of Indians having moved pursuant to Rule 19 to dismiss the action on grounds that the action cannot proceed in the Seneca Nation of Indian's absence because it is an indispensable party under Fed. R. Civ. P. 19; and

The defendants other than the Seneca Nation of Indians having joined in the Seneca Nation of Indians' Rule 19 Motion during oral argument on January 3, 1991; and the Court having heard the argument of counsel; it is

ORDERED, that the defendant Seneca Nation of Indian's Motion pursuant to Rule 12 of the Federal Rules of Civil Procedure is granted and this action is dismissed as against the Seneca Nation of Indians; and it is further

ORDERED, that the defendants' Motion to Dismiss Pursuant to Rule 19 is granted with respect to the first, eighth and tenth causes of action in the Complaint; and it is further

ORDERED that the Clerk of this Court enter a final judgment pursuant to Rule 54(b) upon the order herein dismissing the complaint against the Seneca Nation of Indians and dismissing the first, eighth and tenth causes of action, and the undersigned expressly determines that there is no just reason for delay in hearing the appeal upon the entry of final judgment on this Order, on grounds that the 99-year leases at issue expire on February 19, 1991.

Dated: Buffalo, New York
January 29, 1991

RICHARD J. ARCARA
Richard J. Arcara
U.S. District Judge

APPENDIX B(11)

Judgment on Order of January 29, 1991 Granting Final Judgment per Rule 54(b) of the United States District Court for the Western District of New York, January 29, 1991

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CIV 90-1229A

JOSEPH FLUENT, et al., Individually and as Representative of the Class of Salamanca Lessees holding 99-Year Leases from the Seneca Nation of Indians,

Plaintiffs,

v.

SALAMANCA INDIAN LEASE AUTHORITY, et al.,

Defendants.

JUDGMENT IN A CIVIL CASE

[ ] Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

[x] Decision by Court. This action came to ~~trial~~ or hearing before the Court. The issues have been ~~tried~~ or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED That Final Judgment is entered pursuant to Rule 54(b) dismissing the complaint as to defendant Seneca Nation of Indians; also dismissing the First, Eighth and Tenth Causes of action.

January 29, 1991
Date

(By) Deputy Clerk

FILED
91 JAN 29 PM 3:27
U.S. DISTRICT COURT
W.D.N.Y.—BUFFALO

APPENDIX B(12)

Determination of Non-Intervention by New York State of the United States District Court for the Western District of New York, January 30, 1991

(SEAL)

STATE OF NEW YORK
DEPARTMENT OF LAW
ALBANY, NY 12224

ROBERT ABRAMS
Attorney General

JAN 24 1991
(Stamp Illegible)

O. PETER SHERWOOD
Solicitor General

January 22, 1991

Telephone (518) 474-6639

Hon. Michael J. Kaplan
Clerk
United States District Court
Western District of New York
United States Courthouse
Buffalo, NY 14202

FILED
91 JAN 30 AM 10:24
U.S. DISTRICT COURT
W.D.N.Y.—BUFFALO

Re: Joseph Fluent v. Salamanca Indian Lease Authority, et al.
Civ No. 90-1229A

Dear Mr. Kaplan:

With reference to the certification order issued by Judge Arcara in the above-referenced matter on January 8, 1991, please advise Judge Arcara that the State of New York does not intend to intervene in this action at this time.

Very truly yours,
LEW A. MILLENBACH
LEW A. MILLENBACH
Assistant Attorney General

cc: Damon & Morey, Esqs.
Shane & Franz, Esqs.
Attn: David M. Franz, Esq.
Raichle, Banning, Weiss & Stephens, Esqs.
Attn: R. William Stephens, Esq.

APPENDIX B(13)

Determination of Non-Intervention by United States of the United States District Court for the Western District of New York, February 5, 1991

FILED
91 FEB-5 AM 9:19
U.S. DISTRICT COURT
W.D.N.Y.—BUFFALO

STEVEN E. CARROLL
LAUREN SOLL
Attorneys, U.S. Department of Justice
Environment and Natural Resources Division
Indian Resources Section
P.O. Box 44378
Washington, D.C. 20026-4378
(202) 272-5750

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CIV-90-1229A

JOSEPH FLUENT, Individually and as Representative of the Class of Salamanca Lessees Holding 99-Year Leases from the Seneca Nation of Indians, et al,

Plaintiffs,

v.

SALAMANCA INDIAN LEASE AUTHORITY, et al,

Defendants.

UNITED STATES' RESPONSE TO CERTIFICATION ORDER

The United States files this response to the Court's Certification Order, under 28 U.S.C. §2403(a), to the Attorney General. The United States has received a copy of the Court's January 25, 1991 Decision and Order dismissing, *inter alia*, count ten of the complaint. Count ten is the only claim that raised constitutional challenges to the Settlement Act.

In light of the dismissal of the constitutional challenge to the Act, the United States believes that the Court's certification order is moot, and therefore will not file any further response to the certification order.

Respectfully submitted,

STEVEN E. CARROLL
STEVEN E. CARROLL, Attorney
LAUREN SOLL, Attorney
Indian Resources Section
Environment and Natural
Resources Division
P.O. Box 44378
Washington, D.C. 20026-4378
202) 272-5750

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing United States' Response to Certification Order was served by regular first class mail, postage prepaid on February 4, 1991.

Michael A. Brady, Esquire
Hagerty & Brady
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[1] **APPENDIX B(14)**

Transcript Re: Judge Arcara's Findings on Motion Pursuant to Rule 54(b) of the United States District Court for the Western District of New York, January 29, 1991

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CIV 90-1229A

JOSEPH FLUENT, et al.,

Plaintiffs,

-vs-

SALAMANCA INDIAN LEASE AUTHORITY, et al.,

Defendants.

Proceedings held before the HONORABLE RICHARD J. ARCARA, taken on the 6th Floor of the United States Courthouse, 68 Court Street, Buffalo, New York on January 29, 1991, commencing at 2:00 P.M.

APPEARANCES:

DAMON & MOREY,
BY: JENNIFER COLEMAN, ESQ.,
1000 Cathedral Place,
Buffalo, New York,
Appearing for the Plaintiffs.

RAICHLE, BANNING, WEISS
& STEPHENS
BY: R. WILLIAM STEPHENS, ESQ.,
410 Main Street,
Buffalo, New York,
Appearing for Defendants, other
than Seneca Nation of Indians.

HAGERTY & BRADY,
BY: MICHAEL BRADY, ESQ.,
1010 Chemical Bank Building,
Buffalo, New York,
Appearing for Seneca Nation
of Indians.

[2] THE CLERK: Civil 90-1229A, motion for entry of judgment. Could you please state your names for the record, and the parties that you represent.

MS. COLEMAN: Jennifer Coleman, Attorney for the plaintiffs.

MR. STEPHENS: R. William Stephens, for the defendants other than the Seneca Nation of Indians.

MR. BRADY: Michael Brady, on behalf of the defendant Seneca Nation of Indians.

MR. STEPHENS: Judge, in the interest of saving time, on behalf of the defendants other than the Seneca Nation, counsel for the plaintiffs has informed me that she does not presently intend to file an appeal from the earlier order of this court denying injunctive relief. And if that be the case, then it seems to me that we could stipulate that if the Court of Appeals should reverse on the question of sovereign immunity, that the judgment would be reversed as to the other defendants on counts—what are the numbers, one—

MS. COLEMAN: One, eight and ten.

MR. STEPHENS: —one, eight and [3] ten, because that was the only basis on which you dismissed them, was that the Seneca Nation was an indispensible party.

And with that stipulation, then, Judge, we would not have to be a party to the appeal; we will not have to go to New York, and my clients could save on legal expenses.

And so we have no objection to a 54-B certification, and would agree that if, underline if, please, if the judgment were to be reversed, it would be reversed as to the clients I represent also.

MS. COLEMAN: One comment on that, I guess, and this just occurred to me, Mr. Stephens, is, on the tenth count, which is the Settlement Act of 1990, the court could find that that could proceed even if it determines there's no jurisdiction over the sovereign nation of Indians. So I would want to appeal the dismissal of that count which could rise or fall independent of the jurisdictional ruling with respect to the Seneca Nation.

THE COURT: So then you can't enter into a stipulation.

MR. STEPHENS: I guess we can't. On [4] one and eight, we could. I don't know if that helps him any.

THE COURT: He's going to be there one way or the other.

MR. STEPHENS: I have no objection to the 54-B certification as to the Seneca Nation. I think that there's a different question presented as to the defendants I represent, but that's neither here nor there.

THE COURT: All right. Mr. Brady?

MR. BRADY: Judge, we do not object to the entry of final judgment on the counts that plaintiff seeks to have entry of judgment upon. However, in our review of the rule in the cases that interpret it, we felt that we should call the Court's attention to some of these cases, because what the cases that we looked at indicate is that this cannot be done on the basis of counsel simply agreeing to it or stipulating to it, or otherwise. It has to be done upon an express written finding by the court in accordance with the standards of this rule. And based on what has been presented to the Court at this stage, I'm

not sure that that's been drawn to the [5] Court's attention, or that the Court would be in a position to make those findings.

MS. COLEMAN: Your Honor—

THE COURT: My research, under Rule 54-B, has indicated that there are basically three requirements that have to be met. One, either multiple claims or relief, or multiple parties must be involved.

Two, at least one claim for the rights and liabilities of at least one party must be finely decided, and three, there must be no just reason for denying an appeal.

Those are, based on my research, Mr. Brady, and I didn't know what your position was or whether you had even researched this matter, but I independently did some research on this to determine. That's basically the three requirements.

It appears to me that the complaint does assert multiple causes of action, it includes multiple parties. So the first requirement is met. Second, that the first, eighth and tenth causes of action, along with the rights and liabilities of the sixth, have been finally decided, and finally, there is no just reason for [6] delaying the appeal. To the contrary, it would appear to me that any delay would greatly prejudice the plaintiffs because of the approaching February 19th, 1991 termination date.

So that's, from my review, the principles that are involved here. Is there something further that you feel that I have to determine, Mr. Brady?

MR. BRADY: Judge, I think only on the last point, which is—

THE COURT: Okay. There's no just reason?

MR. BRADY: Right.

THE COURT: What would—Mr. Brady, what reason would you suggest that would not be just here? I mean, for all intents and purposes, if this matter isn't reviewed

by the Second Circuit in the next three or four weeks, this all becomes very academic.

MR. BRADY: I'm not so sure, actually, Judge, as to our client, even if the court does review it. It materially changes things between now and February 19th.

THE COURT: All right.

MR. BRADY: But our concern was, [7] Judge, that what the Court was being asked to do was simply to certify it under 54-B.

THE COURT: I've done more than that now. I've made some—drawn some conclusions here based upon the record.

MR. BRADY: Right. And that's our understanding of what has to happen, is that the Court has to provide written, you know, a written explanation of the no just reason for delay so that the Second Circuit—

THE COURT: Let me ask you this. Have I given sufficient reason, Mr. Brady, or do you feel there's something more I have to do? I don't know what more I am to do. I am inclined to grant this motion, because I think under all the circumstances here, this is obviously affecting a lot of people, their lives, homes, businesses.

I brought a decision as quickly as I could. Some of these issues here are somewhat complex. There was very voluminous submissions on this, it required a tremendous amount of reading and writing here, and I have tried to do it as expeditiously as I could, realizing the circumstances here, and therefore, when the motion was made, I was very inclined to go through that.

[8] I wanted to take a look at the record, find out what the principles are as far as 54-B is concerned. I've looked at them. This is my understanding. I don't know if there's anything more I have to do. I'm inclined to grant it, unless there's some opposition to it.

MR. BRADY: And Judge, we've indicated, we don't have an opposition.

THE COURT: Okay.

MR. BRADY: And our concern was, some of the cases say, look it, and the Second Circuit is saying, look it, counsel should have taken a part of this, and not simply stipulating to this, so we didn't want to be in a position of just standing back and not calling the Court's attention to what—

THE COURT: Have you taken a look at the proposed order?

MR. BRADY: No. I was just handed it.

THE COURT: Could you take a few moments and look at it, and if you don't like it, work something out. And it's much better if you work it out rather than if I work it out.

MR. BRADY: That's fine.

[9] MS. COLEMAN: I would note on the record, Your Honor, that the paragraph one tracks the language of the Court's decision and order of January 25th.

THE COURT: That shouldn't present any problems.

MS. COLEMAN: No. And then the decreedal paragraphs are simply saying you have ordered dismissal of the counts, and it contains the language of 54-B, that there is no just cause for delay and that you are directing the court to enter judgment on this order.

THE COURT: Take a recess, and as soon as you agree, as soon you agree, then come back in, all right?

MR. BRADY: Fine, Judge.

THE COURT: Thank you.

MS. COLEMAN: Thank you, Judge.

(Whereupon, a recess was then taken.)

MS. COLEMAN: We just added, Your Honor, that the grounds 54-B and the statement of no finding for just cause of delay was because of the expiration of the ninety-nine year lease.

THE COURT: Mr. Stephens? Mr. [10] Brady?

MR. BRADY: That's fine, Judge.

THE COURT: I can sign it, we can have it filed today, and off to New York.

MS. COLEMAN: I'd be happy to take it down to file it, Your Honor, because it's my notice of appeal, and I would like to file it.

(The proceedings concluded at 2:30 P.M.)

* * * *

I certify that the foregoing is a correct transcription of the proceedings recorded by me in this matter.

BARBARA BUYERS
BARBARA BUYERS,
CSR, RPR

APPENDIX C(1)

Treaty Between United States and Seneca Nation (Big Tree Treaty—F. Stat. 601, September 15, 1797)

Big Tree Treaty

(With Robert Morris)

7 Stat. 601

September 15, 1797

JOHN ADAMS

President Of The United States of America

To All to Whom These Presents Shall Come, Greetings

Whereas a Treaty was held on the Fifteenth day of September last at Genesee, in the County of Ontario in the State of New York under the authority of the United States with the *Seneka nation of Indians*, and at the said treaty, in the presence and with the approbation of Jeremiah Wadsworth, the Commissioner of the United States, appointed to hold the same, a Convention was entered into between the said Seneka nation of Indians, and the Claimant *of the pre-emption right to the land* which is the subject of the said convention, in which the compensation for the extinguishment of the claims of the said Indians to that land is adjusted: which Convention is in the words following:

CONTRACT

Entered into, under the sanction of the United States of America between Robert Morris and the Seneka nation of Indians.

This indenture, made the fifteenth day of September, in the year of our Lord one thousand seven hundred and ninety-seven, between the sachems, chiefs, and

warriors of the Seneka nation of Indians, of the first part, and *Robert Morris,* of the city of Philadelphia, Esquire, of the second part:

Whereas the Commonwealth of Massachusetts have granted, bargained, and sold unto the said Robert Morris, his heirs and assigns, forever, *the pre-emptive right,* and all other the right, title, and interest, which the said Commonwealth had to all that tract of land hereinafter particularly mentioned, being part of a tract of land lying within the State of New York, the right of pre-emption of the soil whereof, from the native Indians, was ceded and granted by the said State of New York, to the said Commonwealth: and whereas, at a treaty held under the authority of the United States, with the said Seneka nation of Indians, at Genesee, in the county of Ontario, and State of New York, on the day of the date of these presents, and on sundry days immediately prior thereto, by the honorable Jeremiah Wadsworth, Esquire, a commissioner appointed by the President of the United States to hold the same, in pursuance of the constitution, and of the act of the congress of the United States, in such case made and provided, it was agreed, in the presence and with the approbation of the said commissioner, by the sachems, chiefs, and warriors of the said nation of Indians, for themselves and in behalf of their nation, *to sell to the said Robert Morris,* and to his heirs and assigns. forever, all their right to all that tract of land above recited, and hereinafter particularly specified, *for the sum of one hundred thousand dollars,* to be by the said Robert Morris vested in the stock of the bank of the United States, and held in the name of the President of the United States, for the use and behoof of the said nation of Indians, the said agreement and sale being also made in the presence, and with the approbation of the honorable William Stephens, Esquire,

the superintendent appointed for such purpose, in pursuance of a resolve of the General Court of the Commonwealth of Massachusetts, passed the eleventh day of March, in the year of our Lord one thousand seven hundred and ninety-one: now this indenture witnesseth, that the said parties, of the first part, for and in consideration of the premises above recited, and for divers other good and valuable considerations them thereunto moving, have granted, bargained, sold, aliened, released, enfeoffed, and confirmed; and by these presents do grant, bargain, sell, alien, release, enfeoff, and confirm, unto the said party of the second part, his heirs and assigns, forever, all that certain tract of land, except as is hereinafter excepted, lying within the county of Ontario, and State of New York, being part of a tract of land, *the right of pre-emption whereof was ceded by the State of New York to the Commonwealth of Massachusetts, by deed of cession executed at Hartford, on the sixteenth day of December, in the year of our Lord one thousand seven hundred and eighty-six,* being all such part thereof as is not included in the Indian purchase made by Oliver Phelps and Nathaniel Gorham, and bounded as follows, to wit: easterly, by the land confirmed to Oliver Phelps and Nathaniel Gorham by the legislature of the Commonwealth of Massachusetts, by an act passed the twenty-first day of November, in the year of our Lord one thousand seven hundred and eighty-eight; southerly, by the north boundary line of the State of Pennsylvania; westerly, partly by a tract of land, part of the land ceded by the State of Massachusetts to the United States, and by them sold to Pennsylvania, being a right angled triangle, whose hypothenuse is in or along the shore of lake Erie; partly by lake Erie, from the northern point of that triangle to the southern bounds of a tract of land one mile in width,

Treaty of Hartford 16 Dec. 1786

lying on and along the east side of the strait of Niagara, and partly by the said tract to lake Ontario; and on the north by the boundary line between the United States and the King of Great Britain: excepting, nevertheless, *and always reserving out of this grant* and conveyance, all such pieces or parcels of the aforesaid tract, and such privileges thereunto belonging, as are next hereinafter particularly mentioned, which said pieces or parcels of land so *excepted*, are, by the parties to those presents, clearly and fully understood to remain the property of the said parties of the first part, in as full and ample manner as if these presents had not been executed: that is to say, excepting and reserving to them, the said parties of the first part, and their nation, one piece or parcel of the aforesaid tract, at Canawagus, of two square miles, to be laid out in such manner as to include the village, extending in breadth one mile along the river; one other piece or parcel at *Big Tree*, of two square miles, to be laid out in such manner as to include the village, extending in breadth along the river one mile; one other piece or parcel of two square miles at Little Beard's town, extending one mile along the river, to be laid off in such manner as to include the village; one other tract of two square miles at Squawky Hill, to be laid off as follows, to wit: one square mile to be laid off along the river, in such manner as to include the village, the other directly west thereof and contiguous thereto; one other piece or parcel at Gardeau, beginning at the mouth of Steep Hill creek, thence due east until it strikes the old path, thence south until a due west line will intersect with certain steep rocks on the west side of Genesee river, then extending due west, due north, and due east, until it strikes the first-mentioned bound, enclosing as much land on the west side as on the east side of the river. One other piece or parcel at

Kaounadeau, extending in length eight miles along the river and two miles in breadth. One other piece or parcel at Cataraugos, beginning at the mouth of the Eighteen mile or Koghquaugu creek, thence a line or lines to be drawn parallel to lake Erie, at the distance of one mile from the lake, to the mouth of Cataraugos creek, thence a line or lines extending twelve miles up the north side of said creek at the distance of one mile therefrom, thence a direct line to the said creek, thence down the said creek to lake Erie, thence along the lake to the first-mentioned creek, and thence to the place of beginning. Also, one other piece at Cataraugos, beginning at the shore of lake Erie, on the south side of Cataraugos creek, at the distance of one mile from the mouth thereof, thence running one mile from the lake, thence on a line parallel thereto to a point within one mile from the Connondauweyea creek, thence up the said creek one mile, on a line parallel thereto, thence on a direct line to the said creek, thence down the same to lake Erie, thence along the lake to the place of beginning. *Also one other piece or parcel of forty-two square miles, at or near the Allegenny* river. Also, two hundred square miles, to be laid off partly at the Buffalo and partly at the Tannawanta creeks. Also, excepting and reserving to them, the said parties of the first part and their heirs, the privilege of fishing and hunting on the said tract of land hereby intended to be conveyed. And it is hereby understood by and between the parties to these presents, that all such pieces or parcels of land as are hereby rserved, and are not particularly described as to the manner in which the same are to be laid off, shall be laid off in such manner as shall be determined by the sachems and chiefs residing at or near the respective villages where such reservations are made, a particular note whereof to be endorsed on the back of this deed,

Cattaraugus Reservation

Allegany Reservation

and recorded therewith, together with all and singular the rights, privileges, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining. And all the estate, right, title, and interest, whatsoever, of them the said parties of the first part and their nation, of, in, and to the said tract of land above described, except as is above excepted, to have and to hold all and singular the said granted premises, with the appurtenances to the said party of the second part, his heirs and assigns, to his and their proper use, benefit, and behoof forever.

In witness whereof, the parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.

Robert Morris, by his attorney, Thomas Morris,
Koyengquahtah, als. Young King,
Soonookshewan,
Konutaico, als. Handsome Lake,
Sattakanguyase, als. Two Skies of a length,
Onayawos, or Farmer's Brother,
Soogooyawautau, als. Red Jacket,
Taosstaiefi,
Koeentwahka, or Corn Planter
Oosaukauendauki, als. to Destroy a Town,
Sooeoowa, alias Parrot Nose,
Toonahookahwa,
Howwennounew,
Kounahkaetoue,
Taouyaukauna,
Woudougoohkta,
Sonauhquaukau,
Gishkaka, als. Little Billy,
Kaoundoowana, als. Pollard,
Ouneashataikau, or Tail Chief, by his agent Stevenson,
Teahdowainggua, als. Thos. Jemison,
Onnonggaiheko, also. Infant,
Tekonnondee,
Oneghtaugooau,
Connawaudeau,
Ahtaou,
Taukooshoondakoo,
Kauneskanggo,
Soononjuwau,
Tonowauiya, or Captain Bullet,
Jaahkaaeyas,
Taugihshauta,
Sukkenjoonau,
Ahquatieya, or Hot Bread,
Suggonundau,
Taunowaintooh,

Twaunsuiyana,
Takaunoudea,
Shequinedaughque, or Little Beard,
Jowaa,
Saunajee,
Tauolyuquatakausea,
Taoundaudish,
Tooauquainda,
Konnonjoowauna,
Soogooeyaudestak,
Hautwanauekkau, by Young King,
Sauwejuwau,
Kaunooshshauwen,
Taukonondaugekta,
Kaouyanaughque, or John Jemison,
Hoiegush,
Taknaahquau.

To the Indian names are subjoined marks and seals.

Sealed and delivered in presence of—

Nat. W. Howell,
Joseph Ellicott,
Israel Chapin,
James Rees,
Henry Aaron Hilis,
Henry Abeel,
Jasper Parris,)
Horatio Jones,) Interpreters.

Done at a full and general treaty of the Seneka nation of Indians, held at Genessee, in the county of Ontario, and State of New York, on the fifteenth day of September, in the year of our Lord one thousand seven hundred and ninety-seven, under the authority of the United States.

In testimony whereof, I have hereunto set my hand and seal, the day and year aforesaid.

Jere. Wadsworth, (L.S)

Pursuant to a resolution of the legislature of the Commonwealth of Massachusetts, passed the eleventh day of March, in the year of our Lord one thousand seven hundred and ninety-one, I have attended a full and general treaty of the Seneka nation of Indians, at

Genesee, in the county of Ontario, when the within instrument was duly executed in my presence by the sachems, chiefs, and warriors of the said nation, being fairly and properly understood and transacted by all the parties of Indians concerned, and declared to be done to their universal satisfaction: I do therefore certify and approve of the same.

Wm. Shephard.

Subscribed in presence of—
Nat. W. Howell.

Now be it known, That I John Adams, President of the United States of America, having seen and considered the said Convention of Treaty, and being satisfied that the investment of the money therein mentioned, has been made conformably to the intention of the said Convention or Treaty do by and with the advice and consent of the Senate, accept, ratify and confirm the same, and every clause and article thereof: In Testimony whereof, I have caused the Seal of the United States of America to be affixed to these Presents, and signed the same with my Hand.

Done at the City of Philadelphia, the Eleventh Day of April in the Year of our Lord one thousand seven hundred and ninety-eight, and of the independence of the United States of America, the Twenty-second.

John Adams

By the President of the United States

Timothy Pickering,
Secretary of State

APPENDIX C(2)

Treaty Between United States and Seneca Nation (Buffalo Creek Treaty—F. Stat. 550, January 15, 1838)

Buffalo Creek Treaty

7 Stat. 550
January 15, 1838

MARTIN VAN BUREN

President of the United States of America

To All and Singular to Whom These Presents Shall Come, Greeting:

Whereas, a treaty was made and concluded at Buffalo, in the State of New York, on the fifteenth day of January, one thousand eight hundred and thirty-eight, by Ransom H. Gillet, a Commissioner on the part of the United States, and the chiefs, headsmen and warriors of the several tribes of New York Indians, assembled in council.

And Whereas, the Senate did, by a resolution of the eleventh of June, one thousand eight hundred and thirty-eight, advise and consent to the ratification of said treaty with certain amendments; which treaty, so amended, is word for word as follows, to wit:

Articles of A Treaty—15 Jan. 1838

Made and concluded at Buffalo Creek in the State of New York, the fifteenth day of January in the year of our Lord one thousand eight hundred and thirty-eight, by Ransom H. Gillet, a commissioner on the part of the United States, and the chiefs, head men and warriors of the several tribes of New York Indians assembling in council witnesseth:

Whereas, The six nations of New York Indians not long after the close of the war of the Revolution, became convinced from the rapid increase of the white settlements around, that the time was not far distant when their true interest must lead them to seek a new home among their red brethren in the West: And whereas this subject was agitated in a general council of the Six Nations as early as 1810, and resulted in sending a memorial to the President of the United States, inquiring whether the Government would consent to their leaving their habitations and their removing into the neighborhood of their eastern brethren, and if they could procure a home there, by gift or purchase, whether the Government would acknowledge their title to the lands so obtained in the same manner it had acknowledged it in those from whom they might receive it; and further, whether the existing treaties would, in such a case remain in full force, and their annuities be paid as heretofore: And whereas, with the approbation of the President of the United States, purchases were made by the New York Indians from the Menomonie and Winnebago Indians of certain lands at Green Bay in the Territory of Wisconsin, which after such difficulty and contention with those Indians concerning the extent of that purchase, the whole subject was finally settled by a treaty between the United States and the Menomonie Indians, concluded in February, 1831, to which the New York Indians gave their assent on the seventeenth day of October 1832: And whereas, by the provisions of that treaty, five hundred thousand acres of land are secured to the New York Indians of the Six Nations and the St. Regis tribe, as a future home, on condition that they all remove to the same, within three years, or such reasonable time as the President should prescribe: And whereas, the President is satisfied that various

considerations have prevented those still residing in New York from removing to Green Bay, and among other reasons, that many who were in favour of emigration, preferred to remove at once to the Indian territory, which they were fully persuaded was the only permenant and peaceable home for all the Indians. And they therefore applied to the President to take their Green Bay lands, and provide them a new home among their bretheren in the Indian territory. And whereas, the President being anxious to promote the peace, prosperity and happiness of his red children, and being determined to carry out the humane policy of the Government in removing the Indians from the east to the west of the Mississippi, within the Indian territory, by bringing them to see and feel, by his justice and liberality, that it is their true policy and for their interest to do so without delay.

Therefore, taking into consideration the foregoing premises, the following articles of a treaty are entered into between the United States of America and the several tribes of the New York Indians, the names of whose chiefs, head men and warriors are hereto subscribed, and those who may hereafter give their assent to this treaty in writing, within such time as the President shall appoint.

General Provisions

Article 1. The several tribes of New York Indians, the names of whose chiefs, head men, warriors and representatives are hereunto annexed, in consideration of the premises above recited, and the convenants hereinafter contained, to be performed on the part of the United States, hereby cede and relinquish to the United States all their right, title and interest to the lands secured to them at Green Bay by the Menomonie treaty

of 1831, excepting the following tract, on which a part of the New York Indians now resides beginning at the southwesterly corner of the French grants at Green Bay, and running thence southwardly to a point on a line to be run from the Little Cocaclin, parallel to a line of the French grants and six miles from Fox River; from thence on said parallel line, northwardly six miles; from thence eastwardly to a point on the northeast line of the Indian lands, and being at right angles to the same.

Article 2. In consideration of the above cession and relinquishment, on the part of the tribes of the New York Indians, and in order to manifest the deep interest of the United States in the future peace and prosperity of the New York Indians, the United States agree to set apart the following tract of country, situated directly west of the State of Missouri, as a permanent home for all the New York Indians, now residing in the State of New York, or in Wisconsin, or elsewhere in the United States, who have no permanent homes, which said country is described as follows, to wit: Beginning on the west line of the State of Missouri, at the northeast corner of the Cherokee tract and running thence north along the west line of the State of Missouri, twenty-seven miles to the southerly line of the Miami lands; thence west so far as shall be necessary, by running a line at right angles, and parallel to the west line aforesaid, to the Osage lands, and thence easterly along the Osage and Cherokee lands to the place of beginning to include one million eight hundred and twenty-four thousand acres of land, being three hundred and twenty acres for each soul of said Indians as their numbers are at present computed. To have and to hold the same in fee simple to the said tribes or nations of Indians, by patent from the President of the United States, issued in conformity with the provision of third section of the act, entitled "An act to

provide for an exchange of lands, with the Indians residing in any of the States or Territories, and for their removal west of the Mississippi," approved on the 28th day of May, 1830, with full power and authority in the said Indians to divide said lands among the different tribes, nations, or bands, in severalty, with the right to sell and convey to and from each other, under such laws and regulations as may be adopted by the respective tribes, acting by themselves, or by a general council of the said New York Indians, acting for all the tribes collectively. It is understood and agreed that the above described country is intended as a future home for the following tribes, to wit: The Senecas, Onondagas, Cayugas, Tuscaroras, Oneidas, St. Regis, Stockbridges, Runsees, and Brothertowns residing in the State of New York, and the same is to be divided equally among them, according to their respective numbers, as mentioned in a schedule hereunto annexed.

Article 3. It is further agreed that such of the tribes of the New York Indians as do not accept and agree to remove to the country set apart for their new homes within five years, or such other time as the President may, from time to time, appoint, shall forfeit all interest in the lands so set apart, to the United States.

Article 4. Perpetual peace and friendship shall exist between the United States and the New York Indians; and the United States hereby guaranty to protect and defend them in the peaceable possession and enjoyment of their new homes, and hereby secure to them, in said country, the right to establish their own form of government, appoint their own officers, and administer their own laws; subject, however, to the legislation of the Congress of the United States, regulating trade and intercourse with the Indians. The lands secured to them

by patent under this treaty shall never be included in any State or Territory of this Union. The said Indians shall also be entitled, in all respects, to the same political and civil rights and privileges, that are granted and secured by the United States to any of the several tribes of emigrant Indians settled in the Indian Territory.

Article 5. The Oneidas are to have their lands in the Indian Territory, in the tract set apart for the New York Indians, adjoining the Osage tract, and that hereinafter set apart for the Senecas; and the same shall be so laid off as to secure to them a sufficient quantity of timber for their use. Those tribes, whose lands are not specially designated in this treaty, are to have such as shall be set apart by the President.

Article 6. It is further agreed that the United States will pay to those who remove west, at their new homes, all such annuities, as shall properly belong to them. The schedules hereunto annexed shall be deemed and taken as a part of this treaty.

Article 7. It is expressly understood and agreed, that this treaty must be approved by the President and ratified and confirmed by the Senate of the United States, before it shall be binding upon the parties to it. It is further expressly understood and agreed that the rejection, by the President and Senate, of the provisions thereof, applicable to one tribe, or distinct branch of a tribe, shall not be construed to invalidate as to others, but as to them it shall be binding, and remain in full force and effect.

Article 8. It is stipulated and agreed that the accounts of the Commissioner, and expenses incurred by him in holding a council with the New York Indians, and concluding treaties at Green Bay and Duck Creek, in

Wisconsin, and in the State of New York, in 1836, and those for the exploring party of the New York Indians, in 1837, and also the expenses of the present treaty, shall be allowed and settled according to former precedents.

Special Provisions For The Senecas

Article 10. It is agreed with the Senecas that they shall have for themselves and their friends, the Cayugas and Onondagas, residing among them, the easterly part of the tract set apart for the New York Indians, and to extend as far west, as to include one half-section (three hundred and twenty acres) of land for each soul of the Senecas, Cayugas and Onondagas, residing among them; and if, on removing west, they find there is not sufficient timber on this tract for their use, then the President shall add thereto timber land sufficient for their accommodation, and they agree to remove; to remove from the State of New York to their new homes within five years, and to continue to reside there. And whereas at the making of this treaty, *Thomas L. Ogden and Joseph Fellows the assignees of the State of Massachusetts*, have purchased of the Seneca nation of Indians, in the presence and with the approbation of the United States Commissioner, apointed by the United States to hold said treaty, or convention, all the right, title, interest, and claim of the said Seneca nation, to certain lands, by a deed of conveyance a duplicate of which is hereunto annexed; and whereas the consideration money mentioned in said deed, amounting to two hundred and two thousand dollars, belongs to the Seneca nation, and the said nation agrees that the said sum of money shall be paid to the United States, and the United States agree to receive the same, to be disposed of as follows: the sum of one hundred thousand dollars

is to be invested by the President of the United States in safe stocks, for their use, the income of which is to be paid to them at their new homes, annually, and the balance, being the sum of one hundred and two thousand dollars, is to be paid to the owners of the improvements on the lands so deeded, according to an appraisement of said improvements and a distribution and award of said sum of money among the owners of said improvements, to be made by appraisers, hereafter to be appointed by the Seneca nation, in the presence of a United States Commissioner, hereafter to be appointed, to be paid by the United States to the individuals who are entitled to the same, according to said appraisal and award, on their severally relinquishing their respective possessions to the said Ogden and Fellows.

Article 15. The United States hereby agree that they will appropriate the sum of four hundred thousand dollars, to be applied from time to time, under the direction of the President of the United States, in such proportions, as may be most for the interest of the said Indians, parties to this treaty, for the following purposes, to wit: To aid them in removing to their homes, and supporting themselves the first year after their removal; to encourage and assist them in education, and in being taught to cultivate their lands; in erecting mills and other necessary houses; in purchasing domestic animals, and farming utensils and acquiring a knowledge of the mechanic arts.

In testimony whereof, the commissioner and the chiefs, head men, and people, whose names are hereto annexed, being duly authorized, have hereunto set their hands, and affixed their respective seals, at the time and place above mentioned.

R. H. Gillet,
Commissioner.

Noh-sok-dah, or Jim Jones,
Shaw-neh-dik, or William Johnson,
Gaw-neh-do-au-ok, or Reuben Pierce
Shaw-go-nes-goh-sha-oh, or Morris Halitown,
Gus-wa-no-oh, or George Big Deer,
Ho-ca-ga-was, or Jacob Bennet,
On-di-heh-or, or John Bennet,
Wis-ha-noa-nent, or Seneca White,
Ha-dya-no-deh, or Maris Pierce,
Yoh-dih-doh, or David White,
James Shongo,
Ka-non-da-gyh, or William Cass,

Tuscaroras.

Ka-nat-soyh, or Nicholas Cusick,
Sacharissa, or William Chew,
Kaw-we-ah-ka, or William Mt. Pleasant,
Kaw-ra-a-rock-ka, or John Fox,
Geu-ma, or James Cusick,
Ju-hu-ru-at-kak, or John Pattorson,
O-tah-guau-nas-wa, or Samuel Jacobs,
Ka-noh-sa-ta, or James Anthony,
Gou-ro-quan, or Peter Elm,
Tu-nak-she-a-han, or Daniel Peter

Witnesses—James Stryker, Sub-agent, Six Nations, New York Indians. Nathaniel T. Strong, United States' Interpreter, N.Y. agency. H.B. Potter. Orlando Allen. H.P. Wilcox. Charles H. Allen. Horatio Jones. Spencer M. Cone. W.W. Jones. J.F. Schermerhorn. Josiah Trowbridge.

To the Indian names are subjoined a mark and seal.

Senecas

Dao-nepho-gah, or Little Johnson,
Da-ga-o-gess, or Daniel Twoguns,
Geo-odowa-nah, or Captain Pollard,
Joh-nes-he-dih, or James Stevenson,
Hure-hau-stock, or Captain Strong,
Joh-que-ya-suse, or Samuel Gordon,
Gua-nu-oh-doh, or Thompson S. Harris,
Gau-geh-queh-doh, or George Jimeson,
Ni-ga-jos-a, or Samuel Wilson,
Jo-on-da-goh, or John Seneca.

So-ne-a-ge, or Captain Snow
Hon-non-de-uh, or Nathaniel T. Strong,
Nuh-joh-gau-eh, or Tali Peter,
Sho-nauk-ge-nes, or Tonmy Jimmy,
So-joh-gwa-us, or John Tall Chief,
Mau-nah-hoy's-oh, or Blue Eyes
Haw-naw-wah-es, or Levi Halftown,
Goat-hau-oh, Billy Shanks,
Hau-sa-nea-nes, or White Seneca,
Howah-do-goh-dah, or George Bennet,
Hays-tah-jin, or Job Pierce,
Sho-nan-do-wah, or John Gordon,
Shaw-go-za-sof-hog, or Jacob Jameson
Shau-gau-nos-es-tip, or George Fox,
Go-na-daw-goyh, or Jabez Stevenson,
Tit-ho-yuh, or William Jones,
Juneah-dah-gience, or George White, by his agent White Seneca,
Gau-nu-su-goh, or Walter Thompson, by his agent Daniel Twoguns,
Dau-ga-se, or Long John,
Gua-sa-we-dah, or John Bark,
Gau-ni-dough, or George Lindsay,

SCHEDULE A.

Census Of The New York Indians As Taken in 1837
Number residing on the Seneca reservations.

Senecas	2,309
Onondagas	194
Cayugas	130
	2,633

Onondagas, at Onondaga	300
Tuscaroras	273
St. Regis, in New York	350
Oneidas, at Green Bay	600
Oneidas, in New York	620
Stockbridges	217
Munsees	132
Brothertowns	360

The above was made before the execution of the treaty.

R. H. Gillet, Commissioner,

Appendix to

Buffalo Creek Treaty

7 Stat. 550
January 15, 1838

Re: Ogden Land Company Claim

At a treaty held under the authority of the United States of America, at Buffalo Creek in the county of Erie, and State of New York, between the chiefs and head men of the *Seneca nation of Indians,* duly assembled in council, and representing and acting for the said nation, on the one part, and *Thomas Ludlow Ogden* of the city of New York and *Joseph Fellows* of Geneva, in the county of Ontario, on the other part, concerning the purchase of the right and claim of the said Indians in and to the lands within the State of New York remaining in their occupation: Ransom H. Gillet, Esquire, a commissioner appointed by the President of the United States to attend and hold the said treaty, and also Josiah Trowbridge, Esquire, the superintendent on behalf of the Commonwealth of Massachusetts, being severally present at the said treaty, the said chiefs and head men, on behalf of the Seneca nation did agree to sell and release to the said Thomas Ludlow Ogden and Joseph Fellows, and they the said Thomas Ludlow Ogden and Joseph Fellows did agree to purchase all the right, title and claim of the said Seneca nation of, in and to the several tracts, pieces, or parcels of land mentioned, and described in the instrument of writing next hereinafter set forth, and at the price of sum therein specified, as the consideration, or purchase money for such sale and release; which instrument being read and explained to the said parties and mutually agreed to, was signed and sealed by the said contracting parties, and is in the words following:

This indenture, made this fifteenth day of January in the year of our Lord one thousand eight hundred and thirty-eight, between the chiefs and head men of the Seneca nations of Indians, duly assembled in council, and acting for and on behalf of the said Seneca nation, of the first part, and *Thomas Ludlow Ogden,* of the city of New York, and *Joseph Fellows* of Geneva, in the county of Ontario, of the second part witnesseth: That the said chiefs and head men of the Seneca nation of Indians, in consideration of the sum of two hundred and two thousand dollars to them in hand paid by the said Thomas Ludlow Ogden and Joseph Fellows, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released and confirmed, and by these presents do grant, bargain, sell, release and confirm unto the said Thomas Ludlow Ogden and Joseph Fellows, and to their heirs and assigns, all that certain tract, or parcel of land situate, lying and being in the county of Erie and State of New York commonly called and known by the name of Buffalo Creek reservation, containing, by estimation forty-nine thousand nine hundred and twenty acres be the contents thereof more or less. Also, all that certain other tract, or parcel of land, situate, lying and belong in the counties of Erie, Chatauqua, and Cattaraugus in said State commonly called and known by the name of Cattaraugus reservation, containing by estimation twenty-one thousand six hundred and eighty acres, be the contents thereof more or less. *Also, all that certain other tract, or parcel of land, situate, lying and being in the said county of Cattaragus, in said State, commonly called and known by the name of the Allegany reservation, containing by estimation thirty thousand four hundred and sixty-nine acres, be the contents more or less.* And also, all that certain other tract or parcel of land, situate, lying and being partly in said county of

Allegany Reservation

Erie and partly in the county of Genesee, in said State, commonly called and known by the name of Tonawando reservation, and containing by estimation twelve thousand, eight hundred acres, be the same more or less; as the said several tracts of land have been heretofore reserved and are held and occupied by the said Seneca nation of Indians, or by individuals thereof, together with all and singular the the rights, privileges, hereditaments and appurtenances to each and every of the said tracts or parcels of land belonging or appertaining; and all the estate, right, title, interest, claim and demand of the said party of the first part, and of the said Seneca nation of Indians, of, in, and to the same, and to each and every part and parcel thereof: to have and to hold all and singular the above described and released premises unto the said Thomas Ludlow Ogden and Joseph Fellows, their heirs and assigns, to their proper use and behoof for ever, as joint tenants, and not as tenants in common.

In witness whereof, the parties to these presents have hereunto and to three other instruments of the same tenor and date one to remain with the United States, one to remain with the State of Massachusetts, one to remain with the Seneca nation of Indians, and one to remain with the said Thomas Ludlow Ogden and Joseph Fellows, interchangeably set their hands and seals the day and year first above written.

Little Johnson,
Daniel Two Guns,
Captain Pollard,
William Johnson,
Reuben Pierce,
Morris Halftown,

White Seneca,
George Bennet,
John Pierce,
John Gordon,
Jim Jonas,
George White, by his agent,
White Seneca,

James Stevenson,
Captain Strong,
Captain Snow,

Blue Eyes,
Levi Halftown,
Billy Shanks,
John Bark,
George Linsey,
Jacob Bennet,
Jacob Jimeson,
Samuel Gordon,
Thompson S. Harris,
George Jemison,
Nathaniel T. Strong,
Tall Peter,
Tommy Jimmy,
John Tall Chief,

John Snow,
Walter Thompson, by his agent, Daniel Two Guns,

Long John,

George Fox,
Jabez Stevenson,
William Jones,
John Bennet,
Seneca White,
Maris B. Pierce,
David White,
James Shongo,
William Cass,
Samuel Wilson,
John Seneca.

Signed, sealed and delivered in the presence of James Stryker, Nathaniel T. Strong, Spencer H. Cone, Interpreters. H.B. Potter, Charles M. Allen.

To the Indian names are subjoined a mark and seal.

At the beforementioned treaty, held in my presence, as superintendent on the part of the Commonwealth of Massachusetts, and this day concluded, the foregoing instrument of writing was agreed to by the contracting parties therein named, and was in my presence executed by them, and being approved by me, I do hereby certify and declare such my approbation thereof.

Witness my hand and seal, at Buffalo Creek, this 15th day of January in the year 1838.

Josiah Trowbridge.

I have attended a treaty of the Seneca nation of Indians, held at Buffalo Creek, in the county of Erie, in the State of New York, on the fifteenth day of January in the year of our Lord one thousand eight hundred and thirty-eight when the within instrument was duly executed, in my presence, by the chiefs of the Seneca nation, being fairly and properly understood by them. I do, therefore, certify and approve the same.

R.H. Gillet, Commissioner.

And Whereas, the Senate did, on the twenty-fifth of March one thousand eight hundred and forty, resolve, "That in the opinion of the Senate the Treaty between the United States and the Six Nations of New York Indians, together with the amendments proposed by the Senate of the 11th of June, 1838, have been satisfactorily acceded to and approved of by said tribes, the Seneca Tribe included: and that in the opinion of the Senate the President is authorized to proclaim the Treaty as in full force and operation."

Now, therefore, be it known, that I, Martin Van Buren, President of the United States of America, do, in pursuance of the Resolutions of the Senate of the eleventh of June one thousand eight hundred and thirty eight, and twenty-fifth of March one thousand eight hundred and forty, accept, ratify, and confirm, said treaty, and every article and clause thereof.

In testimony whereof, I have caused the Seal of the United States to be hereunto affixed, having signed the same with my hand.

Done at the City of Washington, this fourth day of April, one thousand eight hundred and forty, and of the Independence of the United States the sixty-third.

M. Van Buren

By the President.
John Forsyth
Secretary of State.

(SEAL)

APPENDIX C(3)

Treaty between United States and Seneca Nation (Buffalo Creek Treaty—F. Stat. 586, May 20, 1842)

Buffalo Creek Treaty

7 Stat. 586
May 20, 1842

Ogden and Fellows Claims.
and Return of the
Allegany Reservation to the
Seneca Nation

JOHN TYLER,

President of The United States of America,
To All and Singular to Whom These Presents Shall Come,

Greeting:

Whereas, a treaty was made and concluded at Buffalo Creek, in the State of New York, on the twentieth day of May, in the year one thousand eight hundred and forty-two, between the United States of America, acting herein by Ambrose Spencer their Commissioner, thereto duly authorized, on the one part, *and* the chiefs, headmen and warriors of the Seneca Nation of Indians, duly assembled in council, on the other part; which treaty is word for word as follows, to wit:

ARTICLES OF A TREATY

Made and concluded at Buffalo Creek, in the State of New York, on the twentieth day of May in the year one thousand eight hundred and forty-two, between the United States of America, acting herein by Ambrose Spencer their Commissioner, thereto duly authorized, on the one part, and the chiefs, headmen and warriors of the Seneca nation of Indians, duly assembled in council, on the other part.

Whereas a treaty was heretofore concluded, and made between the said United States, and the chiefs, headmen, and warriors of the several tribes of New York Indians, dated the fifteenth day of January in the year one thousand eight hundred and thirty-eight, which treaty having been afterwards amended, was proclaimed by the President of the United States, on the fourth of April one thousand eight hundred and forty, to have been duly ratified.

And whereas on the day of making this treaty, and bearing even date herewith, a certain indenture was made executed and concluded by and between the said Seneca nation of Indians and *Thomas L. Ogden, and Joseph Fellows, assignees under the State of Massachusetts,* in the presence, and with the approbation of Samuel Hoare, a superintendent on the part of the commonwealth of Massachusetts, which indenture is in the words and figures following to wit:

"This indenture made and concluded between Thomas Ludlog Ogden of the city of New York, and Joseph Fellows of Geneva, in the county of Ontario of the one part, and the chiefs and headmen of the Seneca nation of Indians, on the other part at a council duly assembled and held at Buffalo Creek in the State of New York on the twentieth day of May in the year one thousand eight hundred and forty-two in the presence of Samuel Hoare, the superintendent thereto authorized and appointed by and on the part of the commonwealth of Massachusetts, and of Ambrose Spencer a Commissioner thereto duly appointed and authorized on the part of the United States.

"Whereas at a council held at Buffalo Creek on the fifteenth day of January in the year one thousand eight hundred and thirty eight, an indenture of that date was

made and executed by and between the parties to this agreement, whereby the chiefs and headmen of the Seneca nation of Indians for the consideration of two hundred and two thousand dollars did grant, bargain release and confirm unto the said Thomas Ludlow Ogden and Joseph Fellows, all those four several tracts of land, situate within the State of New York, then and yet occupied by the said nation, or the people thereof, severally described in the said indenture, as the Buffalo Creek Reservation, containing by estimation forty-nine thousand nine hundred and twenty acres of land, the Cattaraugus Reservation containing by estimation twenty-one thousand six hundred and eighty acres of land, *the Allegany Reservation, containing by estimation thirty thousand four hundred and sixty-nine acres of land,* and the Tonnawanda Reservation containing by estimation twelve thousand eight hundred acres of land; a duplicate of which indenture was annexed to a treaty of the same date made between the United States of America and the chiefs, headmen, and warriors of the several tribes of New York Indians assembled in council; which treaty was amended and proclaimed by the President of the United States on the fourth of April one thousand eight hundred and forty, as having been duly ratified; as by the said indenture, treaty and proclamation more fully appear.

"And whereas divers questions and differences having arisen between the chiefs and headmen of the Seneca nation of Indians or some of them, and the said Thomas Ludlow Ogden and Joseph Fellows in relation to the said indenture, and the rights of the parties thereto, and the provisions contained in the said indenture being still unexecuted, the said parties have mutually agreed to settle, compromise and finally terminate all such questions and differences on the terms and conditions hereinafter specified.

NOTE

"Now therefore it is hereby mutually declared, and agreed, by and between the said parties as follows.

"Article First. The said Thomas Ludlow Ogden, and Joseph Fellows in consideration of the release and agreements hereinafter contained, on the part of the said Seneca nation do on their part consent, covenant and agree that they the said nation (the said indenture notwithstanding) shall and may continue in the occupation and enjoyment of the whole of the said two several tracts of land, called the Cattaraugus Reservation, *and the Allegany Reservation* with the same right and title in all things, as they had and possessed therein immediately before the date of the said indenture, *saving and reserving to the said Thomas Ludlow Ogden, and Joseph Fellows the right of pre-emption,* and all other the right and title which they then had or held in or to the said tracts of land.

"Article Second. The chiefs and headmen of the Seneca nation of Indians in consideration of the foregoing, and of the agreement next hereinafter contained, do on their part grant, release and confirm unto the said Thomas Ludlow Ogden, and Joseph Fellows, and to their heirs and assigns, in joint tenancy, the whole of the said two tracts of land severally called the Buffalo Creek Reservation, and the Tonnawanda Reservation, and all the right and interest therein of the said nation.

"Article Third. It is mutually agreed, between the parties hereto that in lieu of the sum expressed in the said indenture, as the consideration of the sale, and release of the said four tracts of land, there shall be paid to the said nation a just consideration sum, for the release of the two tracts, hereby confirmed to the said Ogden and Fellows, to be estimated and ascertained as follows.

"*The present value of the Indian title to the whole of the said four tracts of land including the improvements thereon, shall for all the purposes of this present compact, be deemed and taken to be two hundred and two thousand dollars,* of which sum one hundred thousand dollars shall be deemed to be the value of such title in and to all the lands within the said four tracts exclusive of the improvements thereon, and one hundred and two thousand dollars to be the value of all the improvements within the said four tracts, and of the said sum of one hundred thousand dollars the said Ogden and Fellows shall pay to the Seneca nation such proportion as the value of all the lands within the said two tracts called the Buffalo Creek, and Tonnawanda Reservations shall bear to the value of all the lands within all the said four tracts—and of the said sum of one hundred and two thousand dollars, the said Ogden and Fellows shall pay such proportion as the value of the improvements on the same two tracts, shall bear to the value of the improvements on all the said four tracts.

"Article Fourth. The amount of the consideration monies to be paid in pursuance of the last preceding article, shall be determined by the judgment and award of arbitrators, one of whom shall be named by the Secretary of the War Department of the United States, and one by the said Ogden and Fellows, which arbitrators in order to such judgment and award, and to the performance of the other duties hereby imposed on them, may employ suitable surveyors to explore examine and report on the value of the said lands and improvements, and also to ascertain the contents of each of the said four tracts, which contents shall govern the arbitrators as to quantity in determining the amount of the said consideration money.

"The same arbitrators shall also award and determine the amount to be paid to each individual Indian out of the sum which on the principles above stated, they shall ascertain and award to be the proportionate value of the improvements on the said two tracts called the Buffalo Creek Reservation and the Tonnawanda Reservation, and in case the said arbitrators shall disagree as to any of the matters hereby submitted to them, they may choose an umpire whose decision thereon shall be final and conclusive, and the said arbitrators shall make a report in writing of their proceedings in duplicate, such reports to be acknowledged or proved according to the laws of the State of New York, in order to their being recorded, one of such reports to be filed in the office of the Secretary of the Department of War, and the other thereof to be delivered to the said Thomas L. Ogden and Joseph Fellows.

"Article Fifth. It is agreed, that the possession of the two parts hereby confirmed, to the said Ogden and Fellows, shall be surrendered and delivered up to them, as follows, viz: The forest or unimproved lands on the sale tracts, within one month after the report of the said arbitrators shall be filed, in the office of the Department of War, and the improved lands within two years after the said report shall have been so filed; Provided always that the amount to be so ascertained and awarded, as the proportionate value of the said improvements, shall on the surrender thereof be paid to the President of the United States, to be distributed among the owners of the said improvements, according to the determination and award of the said arbitrators, in this behalf, and provided further that the consideration for the release and conveyance of the said lands shall at the time of the surrender thereof be paid or secured to the satisfaction of the said Secretary of the War Department, the income of which is to paid to the said Seneca Indians annually.

"But any Indian having improvements may surrender the same, and the land occuplied by him and his family at any time prior to the expiration of the said two years, upon the amount awarded to him for such improvements being paid to the President of the United States, or any agent designated by him for that purpose by the said Ogden and Fellows, which amount shall be paid over to the Indian entitled to the same, under the directions of the War Department.

"Article Sixth. It is hereby agreed and declared, to be the understanding and intent of the parties hereto, that such of the said Seneca nation, as shall remove from the State of New York, under the provisions of any treaty, made or to be made between the United States and the said Indians, shall be entitled in proportion to their relative numbers to the funds of the Seneca nation, and that the interest and income of such their share and proportion of the said funds, including the consideration money to be paid to the said nation in pursuance of this indenture, and of all annuities belonging to the said Nation shall be paid to the said Indians so removing at their new homes, and whenever the said tracts called the *Allegheny and the Cattaraugus Reservations,* or any part thereof shall be sold and conveyed by the Indians remaining in the State of New York, the Indians as removing shall be entitled to share in the proceeds of said sales in the like proportion. And it is further agreed and declared, that such Indians owning improvements in the Cattaraugus and Allegheny tracts as may so remove from the State of New York, shall be entitled on such removal, and on surrendering their improvements to the Seneca nation, for the benefit of the nation to receive the like compensations for the same, according to their relative values, as in the third and fourth articles of this treaty are stipulated to be paid, to the owners of

improvements in the Buffalo Creek and Tonnawanda Tracts, on surrendering their improvements; which compensations may be advanced by the President of the United States, out of any funds in the hands of the Government of the United States, belonging to the Seneca nation, and the value of these improvements shall be ascertained and reported by the Arbitrators, to be appointed in pursuance of the fourth article.

"Article Seventh. This indenture is to be deemed to be in lieu of, and as a substitute for the above recited indenture made and dated the fifteenth day of January, one thousand eight hundred and thirty-eighth, so far as the provisions of the two instruments may be inconsistent, or contradictory, and the said indenture so far as the same may be inconsistent with the provisions of this compact, is to be regarded and is hereby declared to be rescinded and released.

"Article Eighth. All the expenses attending the execution of this indenture and compact including those of the arbitration and surveys hereinbefore referred to, and also those of holding the treaty now in negotiation between the United States and the said Seneca Nation, except so far as may be provided for by the United States, shall be advanced and paid by the said Ogden and Fellows.

"Article Ninth. The parties to this compact mutually agree to solicit the influence of the Government of the United States to protect such of the lands of the Seneca Indians, within the State of New York, as may from time to time remain in their possession from all taxes and assessments for roads, highways, or any other purpose until such lands shall be sold and conveyed by the said Indians, and the possession thereof shall have been relinquished by them.

"In witness whereof, the parties to these presents have hereunto, and to three other instruments of the same tenor and date, one to remain with the United States, one to remain with the State of Massachusetts, one to remain with the Seneca Nation of Indians, and one to remain with the said Thomas Ludlow Ogden and Joseph Fellows, interchangeably set their hands and seals the day and year first above written."

Therefore taking into consideration the premises it is agreed and stipulated by and between the United States of America and the Seneca nation of Indians, as follows, to wit:

First, The United States of America consent to the several articles and stipulations contained in the last recited indenture between the said nation, and the said Thomas Ludlow Ogden and Joseph Fellows, above set forth.

Second, The United States further consent and agree that any number of the said nation, who shall remove from the State of New York, under the provisions of the above mentioned Treaty proclaimed as aforesaid, on the fourth day of April one thousand eight hundred and forty, shall be entitled in proportion to their relative numbers to all the benefits of the said Treaty.

Third, The United States of America further consent and agree, that the tenth article of said Treaty proclaimed as aforesaid on the fourth day of April one thousand eight hundred and forty, be deemed, and considered as modified, in conformity with the provisions of the indenture hereinabove set forth, so far as that the United States will receive and pay the sum stipulated to be paid as the consideration money of the improvements therein specified, and will receive hold and apply the sum to be paid, or the securities to be given for the lands therein mentioned, as provided for in such indenture.

in testimony whereof the undersigned Ambrose Spencer Commissioner on the part of the United States of America, and the undersigned chiefs and headmen of the Seneca nation of Indians, have to two parts of this treaty, one thereof to remain with the United States, and the other thereof with the Seneca nation of Indians, set their hands and affixed their seals the day and year first above mentioned.

Tit-ho-yah, or William Jones,
Saul Lagure,
Gau-geh-gruh-doh, or George Jimison,
N.T. Strong,
Hau-neh-hoys-soh, or Blue Eyes,
Jabez Stevenson,
William Krouse,
Daniel Fau Guns,
Goat-hau-oh, or Billy Shanks,
Daniel Fau, Guns,
Goat-hau-oh, or Billly Shanks,
James Pierce,
Gi-eut-twa-geh, or Robert Watt,
Thompson S. Harris,
Sah-go-en-tah, or Morris Halftown,
Tan-wan-ne-us, or Governor Black Snake,
Doa-ne-pho-gah, or Little Johnson,
Joh-nesh-ha-dih, or James Stevenson,
Ho-wah-tan-eh-goh, or John Pierce,
Thomas Jimeson,
Moses Stevenson,
Jonah Armstrong,
Samuel Wilson, or Ni-ge-jos-a,
William Krouse,
John Seneca, or Jo-on-da-goh,
Wo-no-yea-os,or Jacob Bennett,
George Turkey,
Joseph Silverheels,
Da-o-as-sah-au, or Jo. Hunlock,
George Fox,
Yaw-sau-ge, or Peter Johnson,
Noh-sok-dah, or Jim Jonas,
Dih-no-se-du, or Jacob Shongo,
Seneca White,
Gesh-u-aw, or James Shongo,
Jarvis Spraing,
Ti-at-tah-co, or Adam Dextador,
Moris B. Pierce,
So-gooh-ques, or John Tailchief,
Isaac Halftown,
David Snow,
John Bark,
George Killbuck,
George Dennis,
John Kennedy, Sen.,
Abram John,

Da-gon-on-de, or William Patterson,
Samuel Goudon,
Tunis Halftown,
Hau-sa-nea-nes, or White Seneca,
Gah-nang-ga-sot, or Young Chief,
Job Pierce,
Saw-da-ne, or George Deer,
Ga-na-waw, or John Cook,
Jaw-ne-us, or John Dickey,
George Big Deer,
Nah-joh-gau-eh, or Tall Peter,
John Kennedy, jr.

Signed sealed and delivered in the presence of The Words "and Allegany" in the sixth page being interlined. A. Dixon, Commissioner on the part of New York. Benj. Ferris, Orlando Allen, Asher Wright, O.M. Marshall, Elam R. Jewett, Cortland B. Stebbins, Joseph S. Wasson.

To the Indian names are subjoined a mark and seal.

Now, therefore, be it known, that I, John Tyler, President of the United States of America, having seen and considered said treaty do, in pursuance of the advice and consent of the Senate, as expressed in their resolution of the twenty-fourth of August, one thousand eight hundred and forty-two, accept, ratify, and confirm the same, and every article and clause thereof.

In testimony whereof, I have caused the Seal of the United States, to be hereunto affixed, having signed the same with my hand.

Done at the City of Washington, the twenty-sixth day of August, in the year of our Lord one thousand eight hundred and forty-two, and of the Independence of the United States the sixty-seventh.

John Tyler

By the President,
Danl Webster
Secretary of State.

(L.S)

[330] **APPENDIX D(1)**

United States Statute (Forty-Third Congress, Sess. II, Ch. 90, Act of February 19, 1875)

Feb. 19, 1875.

CHAP. 90.—An act to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany reservations, and to confirm existing leases.

Leases of lands by Seneca Nation of New York Indians, for railroad purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all leases of land within the Cattaraugus and Allegany reservations in the State of New York, heretofore made by or with the authority of the Seneca Nation of New York Indians, to railroad-corporations, are hereby ratified and confirmed; and said Seneca Nation may, in accordance with their laws a form of government, lease lands within said reservations for railroad-purposes.

Boundaries of certain villages in Allegany reservation.

SEC. 2. That the President of the United States shall appoint three commissioners, whose duty it shall be, as soon as may be, to survey, locate, and establish proper boundaries and limits of the villages of Vandalia, Carrolton, Great Valley, *Salamanca,* West Salamanca, and Red House, within said *Allegany reservation,* including therein, as far as practicable, all lands now occupied by white settlers and such other lands as, in their opinion, may be reasonably required for the purposes of such villages; and they shall cause a return of their doings in writing,

Maps of survey.

together with maps of such surveys and

locations duly certified by them, to be filed in the office of the county clerk of the county of Cattaraugus, in said State, there to be recorded and preserved. The boundaries of said villages so surveyed, located, and established shall be the limits of said villages for all the purposes of this act.

Leases in said villages by Indians, to be valid for five years,&c.

SEC. 3. That all leases of land situate within the limits of said villages when established as hereinbefore provided, except those provided for in the second section of this act, in which Indians or said Seneca Nation, or persons claiming under them are lessors, shall be valid and binding upon the parties thereto, and upon said Seneca Nation for a period of five years from and after the passage of this act, except such as by their terms may expire at an earlier date; and at the end of said period, or at the expiration of such leases as terminate within that time, said nation through its councillors shall be entitled to the possession of the said lands, and shall have the power to lease the same: *Provided, however,* That at the expiration of said period, or the termination of said leases, as hereinbefore provided, said leases shall be renewable for periods not exceeding twelve years, and the persons who may be at such time the owner or owners of improvements erected upon such lands, shall be entitled to such renewed leases, and to continue in possession of such lands, on such conditions as may be agreed upon by him or them and such councillors; and in case they cannot

Renewal of leases.

agree upon the conditions of such leases, or the amount of annual rents to be paid, then the said councillors shall appoint one person, and the other party or parties shall choose one person, as referees to fix and determine the terms of said lease and the amount of annual rent to be paid; and if the two so appointed and chosen cannot agree, they shall choose a third person to act with them, the award of whom, or the major part of whom, shall be final and binding upon the parties; and the person or persons owning said improvements shall be entitled to a lease of said land and to occupy and improve the same according to the terms of said award, he or they paying rent and otherwise complying with the said lease or said award; and whenever any lease shall expire after its [331] renewal as aforesaid, it may, at the option of the lessee, his heirs or assigns, be renewed in the manner hereinbefore provided.

Power of Seneca Nation to lease lands not owned by individuals.

SEC. 4. That said Seneca Nation is hereby authorized, by resolution of its councillors, duly elected according to the laws and system of government of said nation, or in such other manner as said nation in council may determine, to lease lands within said villages to which, by the laws or customs of said nation, no individual Indian or Indians or other person claiming under him or them, has or is entitled to the rightful possession.

Survey of village lands now leased.

SEC. 5. That it shall be the further duty of the said commissioners to cause all lands within such villages now leased, as

hereinbefore mentioned, to be surveyed and defined as near as may be, and to cause the same to be designated upon the maps of such villages hereinbefore mentioned and provided for. All leases of lands within said villages, whether now existing or hereafter to be made under the provisions of this act, shall be recorded in the office of the clerk of said county of Cattaraugus in the same manner and with like effect as similar instruments relating to lands lying in said county outside of said reservations are recorded by the laws of said State of New York. All leases herein mentioned or provided for shall pass by assignment in writing, will, descent, or otherwise in the manner provided by the laws of said State: *Provided, however,* That the rights of Indians in such leases shall descend as provided by the laws of said Seneca Nation.

Recording of leases.

Assignment, devise, descent of leases.

SEC. 6. That all moneys arising from rents under the provisions of this act which shall belong to said Seneca Nation shall be paid to and recoverable by the treasurer of said Seneca Nation, and expended in the same manner and for the same purposes as are other revenues or moneys belonging to said Seneca Nation.

Rents due Seneca Nation, how recovered and applied.

SEC. 7. That the courts of the State of New York within and for the county of Cattaraugus, having jurisdiction in real actions, and the circuit and district courts of the United States in and for the northern district of said State, shall have jurisdiction

Jurisdiction of courts.

Laws of New York.

of all actions for the recovery of rents and for the recovery of possession of any real property within the limits of said villages, whether actions of debt, ejectment, or other forms of action, according to the practice in said courts; and actions of forcible entry and detainer, or of unlawful detainer arising in said villages, may be maintained in any of the courts of said county which have jurisdiction of such actions.

SEC. 8. That all laws of the State of New York now in force concerning the laying out, altering, discontinuing, and repairing highways and *bridges* shall be in force within said *villages*, and may, with the consent of said Seneca Nation in council, extend to, and be in force beyond, said villages in said reservations, or in either of them; and all municipal laws and regulations of said State may extend over and be in force within said villages: *Provided, nevertheless,* That nothing in this section shall be construed to authorize the taxation of any Indian, or the property of any Indian not a citizen of the United States.

Taxation of Indians.

Approved, February 19, 1875.

APPENDIX D(2)

United States Statute (Fifty-First Congress, Sess. I, Ch. 1132, Act of September 30, 1890)

CHAP. 1132.—An act to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany Reservations, and to confirm existing leases.

September 30, 1890.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever the leases of land situate within the limits of the villages mentioned in the act of Congress entitled '*An* act to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany Reservations, and to confirm existing leases," approved February nineteenth, eighteen hundred and seventy-five, except leases to railroad, shall by the terms of said act be renewable, the same shall; be renewable for a term not exceeding ninety-nine years, instead of the term of twelve years, as therein provided, subject to all other terms and conditions of said act.

Leases of lands by Seneca Nation of New York Indians, to be renewable.
Vol. 18, p. 330.

Excepted leases.

Term of renewal.
Conditions, etc.

Approved, September 30, 1890.

APPENDIX D(3)

United States Statute (Public Laws—Ch. 707, Act of August 14, 1950)

[CHAPTER 707]

AN ACT

August 14, 1950
[H. R. 4947]
[Public Law 690]

To regulate the collection and disbursement of moneys realized from leases made by the Seneca Nation of Indians of New York, and for other purposes.

Seneca Nation of Indians, N. Y.
Funds from leases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all moneys of the Seneca Nation of Indians of New York realized from existing leases, or leases that may hereafter be made, of lands within the Cattaraugus, Allegany, and Oil Springs Reservations shall be paid to and recoverable by the treasurer of the Seneca Nation of Indians for and in the name of the Seneca Nation of Indians: *Provided,* That the city of Salamanca may, if authorized by the laws of the State of New York, pay to the treasurer of the Seneca Nation all moneys payable on leases within the city of Salamanca on behalf of the owners of such leases; *Provided further,* That nothing herein contained shall be construed to authorize the city of Salamanca to grant new leases, or to modify, change, or alter existing leases, except with the consent of the Seneca Nation and upon terms agreeable to the Seneca Nation, such consent and such agreement to be obtained from such officer or agency of

the Seneca Nation as may be duly authorized by the Seneca Nation to give such consent or arrive at such agreement.

SEC. 2. Nothing in this Act shall be construed as waiving the rights or title of the Seneca Nation to the lands referred to in the first section of this Act, nor shall such rights or title be abridged except as may be hereafter provided by the United States in full consideration of the rights of the Seneca Nation.

Distribution, etc., of funds.

SEC. 3. From the money so received, the treasurer of the Seneca Nation shall, annually on the first Monday in June, deduct and set aside a sum not to exceed $5,000 for disposal by the council of the Seneca Nation, and distribute the balance among the enrolled members of the Seneca Nation on a per capita basis. The council of the Seneca Nation shall keep complete and detailed record of all payments and disbursements from the sum so set aside, and shall make such records available for inspection by members of the Seneca Nation at all reasonable times.

Bond.

SEC. 4. The treasurer of the Seneca Nation shall give bond to the Seneca Nation, conditioned upon his faithful performance of the duties herein imposed, in such sum as may be approved by the Comptroller of the State of New York, and the treasurer of the Seneca Nation shall, annually on the first Monday in July, make a report to the Comptroller showing the receipts and disbursements of all moneys received by him

Report to Comptroller.

under authority of this Act, and shall transmit a copy of this report to the council of the Seneca Nation and shall make a copy available for inspection by members of the Seneca Nation at all reasonable times.

Additional authority to lease lands.

SEC. 5. In addition to the authority now conferred by law on the Seneca Nation of Indians to lease lands within the Cattaraugus, Allegany, and Oil Springs Reservations to railroads and to lease lands within the limits of the villages established under authority of the [443] Act of February 19, 1875 (18 Stat. 330), the Seneca Nation of Indians, through its council, is authorized to lease lands within the Cattaraugus, Allegany, and Oil Springs Reservations, outside the limits of such villages, *for such purposes and such periods as may be permitted by the laws of the State of New York.*

Copies of official records.

SEC. 6. The Secretary of the Interior is directed to give the State of New York or to any authorized agency thereof or to the proper officials of the several tribes copies of official records required by the State, or by any authorized agency thereof or by the officials of the several tribes, to carry out the purposes of this Act or other purposes which, in the discretion of the Secretary of the Interior, are in the interests of the welfare of the Indians of New York State: *Provided,* That copies as are given to the State of New York or to any authorized agency thereof shall be available for inspection at all

reasonable times by duly authorized representatives of such tribes or of the Six Nations of New York.

SEC. 7. All Acts or parts of Acts inconsistent with this Act are hereby repealed.

Approved August 14, 1950.

APPENDIX D(4)

United States Statute (101st Congress, 22 Sess., Settlement Act of 1990)

Calendar No. 975

H. R. 5367

101st CONGRESS
2b SESSION

(H 101-832)

IN THE SENATE OF THE UNITED STATES

OCTOBER 12 (legislative day, OCTOBER 2), 1990
Received; read twice and placed on the calendar

AN ACT

To provide for the renegotiation of certain leases of the Seneca Nation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Seneca Nation Settlement Act of 1990".

SEC. 2. FINDINGS AND PURPOSES.

(a) CITY OF SALAMANCA AND CONGRESSIONAL VILLAGES—The Congress finds and declares that:

(1) Disputes concerning leases of tribal lands within the city of Salamanca and the congressional villages, New York, have strained relations between the Indian and non-Indian communities and have resulted in adverse economic impacts affecting both communities.

(2) Some of the significant historical events which have led to the present situation include—

(A) beginning in the mid-nineteenth century, several railroads obtained grants or leases of rights of way through the Allegany Reservation without Federal authorization or approval and on terms which did not adequately protect the interests of the Seneca Nation;

(B) after construction of these railroads, Allegany Reservation lands were leased to railroad employees, persons associated with the railroads, residents of the city and farmers without Federal authorization or approval and on terms which did not adequately protect the interests of the Seneca Nation;

(C) none of these leases had Federal authorization or approval and, after the courts ruled these leases invalid, Congress enacted the Act of February 19, 1875 (18 Stat. 330), confirming existsing leases of Allegany Reservation lands, authorizing further leasing by the Seneca Nation, and making the confirmed leases renewable for a twelve year period;

(D) the Act of September 30, 1890 (26 Stat. 558), amended the 1875 Act by substituting a renewal term of "not exceeding ninety-nine years" for the original renewal term of twelve years; and

(E) in 1952 the Seneca Nation filed a claim with the Indian Claims Commission against the United States for use of improper lease fees, and in 1977 a settlement was reached regarding such claim, providing for the payment of $600,000 to the Seneca Nation covering the period beginning in 1870 to the end of 1946.

(3) An analysis of historic land values indicates that the payments made under the original lease agreement and under the settlement described in paragraph (2)(E) were well below the actual lease value of the property.

(4) The approaching expiration of the Salamanca and congressional village leases on February 19, 1991, has created significant uncertainty and concern on the part of the city of Salamanca and Salamanca residents, and among the residents of the congressional villages, many of whose families have resided on leased lands for generations.

(5) The future economic success of the Seneca Nation, city, and congressional villages is tied to the securing of a future lease agreement.

(6) The Federal and State governments have agreed that there is a moral responsibility on the part of both governments to help secure a fair and equitable settlement for past inequities.

(b) PURPOSE.—It is the purpose of this Act—

(1) to effectuate and support the Agreement between the city and the Seneca Nation, and facilitate the negotiation of new leases with lessees in the congressional villages;

(2) to assist in resolving the past inequities involving the 1890 leases and to secure fair and equitable compensation for the Seneca Nation based on the impact of these leases on the economy and culture of the Seneca Nation;

(3) to provide a productive environment between the Seneca Nation and lessees for negotiating the leases provided for under the Agreement;

(4) to provide stability and security to the city and the congressional villages, their residents, and businesses;

(5) to promote the economic growth of the city and the congressional villages;

(6) to promote economic self-sufficiency for the Seneca Nation and its members;

(7) to promote cooperative economic and community development efforts on the part of the Seneca Nation and the city; and

(8) to avoid the potential legal liability on the part of the United States that could be a direct consequence of not reaching a settlement.

SEC. 3. DEFINITIONS.

For the purposes of this Act—

(1) the term "1890 lease" means a lease made by the Seneca Nation which is subject to—

(A) the Act entitled "An Act to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany reservations, and to confirm existing leases" approved February 19, 1875 (chap. 90, 18 Stat. 330); and

(B) the Act entitled "An Act to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany Reservations, and to confirm existing leases" approved September 30, 1890 (chap. 1132, 26 Stat. 558);

(2) the term "Agreement" means the document executed by the Seneca Nation and the city entitled "Agreement between the Seneca Nation of Indians and the City of Salamanca", including the appendix to the Agreement;

(3) the term "city" means the city of Salamanca, New York;

(4) the term "lessee" means the holder of an 1890 lease which either expires in 1991 or is one of the leases listed in document 1 of the Technical Documents, including any lessee who holds an 1890 lease by reason of assignment, inheritance, or other manner as provided by the Act referred to in paragraph (1)(A);

(5) the term "memorandum of understanding" means an agreement between the State and the Seneca Nation pertaining to the payment of the funds to be provided pursuant to this Act, which memorandum of understanding reflects an agreement between the Seneca Nation and the State concerning a mechanism and schedule of payments for the funds described in section 6(c);

(6) the term "Secretary" means the Secretary of the Interior;

(7) the term "Seneca Nation" means the Seneca Nation of Indians of the Allegany, Cattaraugus, and Oil Spring Reservations;

(8) the term "State" means the State of New York;

(9) the term "Technical Documents" means the documents which comprise the appendix to the Agreement; and

(10) the term "congressional villages" means the villages of Carrollton, Great Valley, and Vandalia in the State of New York.

SEC. 4. NEW LEASES AND EXTINGUISHMENT OF CLAIMS.

(a) NEW LEASES.—If the Seneca Nation offers new leases in accordance with the Agreement, this Act shall apply with respect to the Seneca Nation. The Seneca Nation shall supply copies of such leases to the Secretary and shall certify in writing that it has supplied the Secretary with copies of written offers to all lessees entitled to an offer.

(b) EXTINGUISHMENT OF CLAIMS.—The Seneca Nation shall execute appropriate documents relinquishing all claims against the United States, the State, the city, the congressional villages, and all prior lessees for payment of annual rents prior to February 20, 1991, with respect to all prior and existing leases.

(c) EFFECTIVE DATE OF LEASES AND RELINQUISHMENTS.—(1) The relinquishment of claims against the United States shall be effective upon payment by the United States to the Seneca Nation of the funds provided in section 6 of this Act.

(2) The offers, and any acceptances thereof, referred to in subsection (a), and the relinquishment of claims against the State, the city, the congressional villages, and all prior lessees for payment of annual rents referred to in subsection (b) shall not be binding on the Seneca Nation until after the later of the dates on which (1) Congress, or (2) the legislature of the State appropriates the amount of funds set forth in section 6 of the Seneca Nation and the State agree upon a schedule and mechanism for payments for funds pursuant to section 6(c). Such agreement shall render the offers, acceptances and the relinquishment effective so long as the payments are made as agreed upon by the Seneca Nation and the State.

SEC. 5. RESPONSIBILITIES AND RESTRICTIONS.

(a) SENECA NATION.—The Congress finds that the Seneca Nation is solely responsible for negotiation of the leases under the Agreement in its own interest and approval of any such lease by the United States is not required.

(b) LESSEES.—The Congress finds that—

(1) the lessees of leases with the Seneca Nation are responsible for representing their own interest in lease negotiations with the Seneca Nation.

(2) nothing in this Act shall be construed to prevent the lessees from collectively negotiating with the Seneca Nation regarding such leases, whether through informal groups or as delegations formally sanctioned by either the State or local governments.

(c) UNITED STATES.—(1) The United States shall not serve in a capacity to approve leases of the Seneca Nation.

(2) Federal funds may not be obligated or expended, directly or indirectly, for annual payments under any such lease, except for funds that may be available under a conventional, nation-wide program.

(d) STATE.—(1) The State shall not serve in a capacity to approve leases of the Seneca Nation.

(2) State funds may not be obligated or expended, directly or indirectly, for annual payments under any such lease.

SEC. 6. SETTLEMENT FUNDS.

(a) IN GENERAL.—In recognition of the findings and purposes specified in section 2, the settlement funds provided pursuant to this Act shall be provided by the United States and the State. The Secretary may not obligate or expend funds provided under subsection (b) until the Secretary determines that there is an agreed upon and signed memorandum of understanding.

(b) FUNDS PROVIDED BY UNITED STATES.—

(1) CASH PAYMENT.—The Secretary shall pay to the Seneca Nation the amount of $30,000,000, which is the Federal share of the cash payment to be managed, invested, and used by the Nation to further specific objectives of the Nation and its members, all as determined by the Nation in accordance with the Constitution and laws of the Nation.

(2) ECONOMIC DEVELOPMENT.—(A) In addition to the amount provided under paragraph (1), the Secretary shall pay to the Seneca Nation the

amount of $5,000,000 to be used for the economic and community development of the Seneca Nation, including the city of Salamanca, which is an integral part of the Seneca Nation's Allegany Reservation. Such amount shall be deposited by the Secretary, administered, and disbursed in accordance with subparagraph (B).

(B)(i) The sum of $2,000,000 shall be deposited in a separate interest bearing account of the Seneca Nation. The account shall be administered, and the principal and interest thereon disbursed, by the Seneca Nation in accordance with a plan approved by the Council of the Seneca Nation to promote the economic and community development of the Seneca Nation. Until the principal is expended pursuant to such plan, the income accruing from such sum shall be disbursed to the treasurer of the Seneca Nation on a quarterly basis to fund tribal government operations and to provide for the general welfare of the Seneca Nation and its members. The Seneca Nation may in its discretion add the accured income to the principal.

(ii) The sum of $3,000,000 shall be deposited in an escrow account which shall be owned by the Seneca Nation. The escrow agent shall be selected by agreement of the Seneca Nation and the city. The escrow account shall remain in existence for a period of ten years from the date on which the principal is deposited or until all payments provided for under section V.D. of the Agreement have been made. The escrow account shall be held and disbursed for economic and community development as set forth in section V.D. of the Agreement. Upon the expiration of the ten-year period, the $3,000,000

principal shall be disbursed in accordance with a plan approved by the Council of the Seneca Nation to promote the economic and community development of the Seneca Nation.

(c) FUNDS TO BE PROVIDED BY THE STATE.—The State, in accordance with its laws and regulations, shall provide the sum of $16,000,000 in cash payments and $9,000,000 for economic or community development subject to the provisions of the memorandum of understanding.

(d) TIME OF PAYMENTS.—The payments required by this section on the part of the United States shall be made within 30 days of the Secretary's determination that the Seneca Nation has complied with section 4, or upon the availability of the amounts necessary to carry out this Act, if such determination has previously been made. If the Secretary determines that the Seneca Nation has not complied with section 4, he shall advise the Seneca Nation in writing of all steps it must take to comply.

(c) LIMITATION.—The only amounts available to carry out this Act shall be those amounts specifically appropriated by the Congress or the legislature of the State to carry out this Act.

SEC. 7. CONDITIONS PRECEDENT TO PAYMENT OF
UNITED STATES AND STATE FUNDS.

Amounts may not be expended from—

(1) the $30,000,000 and the $5,000,000 provided by the United States under section 6(b), and

(2) the $16,000,000 and $9,000,000 provided by the State under section 6(c),

until after the authorized officials of the Seneca Nation execute new leases with all lessees who accept the Seneca Nation's offer of a new lease, as filed with the Secretary under section 4(a), and execute approriate documents relinquishing all claims for payment of annual rents prior to February 20, 1991, with respect to such leases.

SEC. 8. MISCELLANEOUS PROVISIONS.

(a) LIENS AND FORFEITURES, ETC.—Subject to subsection (b), the provisions of section 7 of the Indian Tribal Judgment Funds Use and Distribution Act (25 U.S.C. 1407) shall apply to any payment of funds authorized to be appropriated under this Act and made to individual members of the Seneca Nation. None of the payments, funds, or distributions authorized, established, or directed by this Act, and none of the income derived therefrom, which may be received under this Act by the Seneca Nation or individual members of the Seneca Nation, shall be subject to levy, execution, forfeiture, garnishment, lien, encumbrance, seizure, or State or local taxation.

(b) ELIGIBILITY FOR GOVERNMENT PROGRAMS.—None of the payments, funds or distributions authorized, established, or directed by this Act, and none of the income derived therefrom, shall affect the eligibility of the Seneca Nation or its members for, or be used as a basis for denying or reducing funds under, any Federal program.

(c) LAND ACQUISITION.—Land within its aboriginal area in the State or situated within or near proximity to former reservation land may be acquired by the Seneca Nation with funds appropriated pursuant to this Act. State and local governments shall have a period of 30 days after notification by the Secretary or the Seneca

Nation of acquisition of, or intent to acquire such lands to comment on the impact of the removal of such lands from real property tax rolls of state political subdivisions. Unless the Secretary determines within 30 days after the comment period that such lands should not be subject to the provisions of section 2116 of the Revised Statutes (25 U.S.C. 177), such lands shall be subject to the provisions of that Act and shall be held in restricted fee status by the Seneca Nation. Based on the proximity of the land acquired to the Seneca Nation's reservations, land acquired may become a part of and expand the boundaries of the Allegany Reservation, the Cattaraugus Reservation, or the Oil Spring Reservation in accordance with the procedures established by the Secretary for this purpose.

SEC. 9. LIMITATION OF ACTION.

Notwithstanding any other provision of law, any action to contest the constitutionality or validity under law of this Act shall be barred unless the action is filed on or before the date which is 180 days after the date of enactment of this Act. Exclusive jurisdiction over any such action is hereby vested in the United States District Court for the Western District of New York.

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as may be necessary to carry out this Act.

Passed the House of Representatives October 10, 1990.

Attest: DONNALD K. ANDERSON,

Clerk.

Calendar No. 975

H. R. 5367

101ST CONGRESS
2b SESSION

AN ACT

To provide for the renegotiation of certain leases of the Seneca Nation, and for other purposes.

OCTOBER 12 (legislative day, OCTOBER 2), 1990
Received; read twice and placed on the calendar

APPENDIX E(1)

New York State Statute (Art. 8, Sections 1790-1799, Public Authorities Law, 1969)

PUBLIC AUTHORITIES LAW

ART 8 §1792

§1792. Territory of district
§1793. Membership
§1794. Powers
§1794-a. Indian lease tax
§1795. Purpose
§1796. Bonds and other obligations
§1797. Review
§1798. Inconsistent provisions
§1799. Duration

HISTORY:

Add, L 1969, ch 791, eff May 22, 1969.

VERALEX® : Cases and annotations referred to herein can be further researched through the VERALEX electronic retrieval system's two services, Auto-Cite® and SHOWME® . Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references. Use SHOWME to display the full text of cases and annotations.

CROSS REFERENCES:

This title referred to in §§1791, 1798.

§1790. Short title

This title may be cited as "Salamanca Indian lease authority act."

HISTORY:

Add, L 1969, ch 791, eff May 22, 1969.

§1791. Definitions

Definitions: As used in this title, unless a different meaning clearly appears from the context:

(a) The term "nation" shall mean the Seneca Nation of Indians.

(b) The term "reservation" shall mean the reservation lands of the Seneca Nation of Indians underlying the city of Salamanca, of Cattaraugus in the state of New York.

(c) The term "city" shall mean the city of Salamanca.

(d) The term "mayor" shall mean the mayor of the city of Salamanca.

(e) The term "master lease" shall mean the lease from the nation to the authority.

(f) The term "sublease" shall mean a lease between the authority and a lessee.

HISTORY:

Add. L. 1969, ch 791, eff May 22, 1969.

§1792. Territory of district

There is hereby created and established a district to be known as the Salamanca Indian lease district which shall embrace all that portion of the city of Salamanca lying upon the reservation lands of the Seneca Nation of Indians.

HISTORY:

Add, L 1969, ch 791, eff May 22, 1969.

RESEARCH REFERENCES AND PRACTICE AIDS:

56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions §13.

§1793. Membership

There is hereby created and established a board to be known as the Salamanca Indian lease authority. Such board shall be a body corporate and politic, constituting a public-benefit corporation. The board shall consist of seven members all of whom shall be residents of the city of Salamanca. One member shall be the mayor of the city of Salamanca. One member shall be the comptroller of the city of Salamanca. The mayor shall serve as a board member for the period coincident with his term of office, and although serving ex officio, shall have the right to vote. The remaining five members shall be appointed by the mayor, with the approval of the city council, one member initially to a one-year term, a second member to a two-year term, a third member to a three-year term, and a fourth member to a four-year term and the fifth member to a full five-year term. As the terms above set forth expire, replacements to such board shall be named by the mayor with the approval of the city council for full five-year terms. If a vacancy shall occur by reason of death, disqualification, non-residence after appointment, resignation or removal, the successor shall be appointed by the mayor with the approval of the city council for the unexpired term. The members of the authority shall before entering upon their duties take the

constitutional oath of office and file the same in the office of the clerk of the city of Salamanca. The authority shall organize by the selection from its members of a chairman, vice-chairman and secretary. It shall adopt such rules as it may deem necessary and proper for the government of its own proceedings and the conduct of its authorized activities and shall keep a record of its proceedings. A majority of the members of the authority shall constitute a quorum for the transaction of business. The members of the authority shall serve without salary. A member may be removed by the mayor with the consent and approval of the city council for cause after giving such member a copy of the charges and an opportunity to be heard in his own defense in person or by counsel upon not less than ten days' notice. The decision of the appointing officer shall be subject to review pursuant to the appropriate provisions of the civil practice law and rules.

The authority shall grant to the Seneca Nation of Indians the option of having seated at each meeting of the board up to three members of the nation, who may participate in such meetings but without vote, and who shall be designated by the council of the nation for such term or terms as the council may determine. Such members shall have access to all records of the authority.

HISTORY:

Add, L 1969, ch 791, eff May 22, 1969.

CROSS REFERENCES:

Oath of office, CLS NY Const Art 13 §1;
CLS Pub Off §10.

RESEARCH REFERENCES AND PRACTICE AIDS:

1 Am Jur 2d, Administrative Law §§60-68.

63A Am Jur 2d, Public Officers and Employees §§28, 96, 220.

§1794. Powers

The authority shall have the power to enter into a lease with the Seneca Nation of Indians for any or all of the reservation lands underlying the city of Salamanca. The authority shall have the power to enter into subleases with persons, firms or corporations with respect to the lands comprehended by the lease from the Seneca Nation of Indians. The authority shall have the power to accept the surrender or assignment of existing leases and to negotiate for and enter into subleases with respect to any of such property.

The authority shall have the power to:

(a) Confer with the governing board of the city and with the governing board of the nation.

(b) Confer with lessees of property for the purpose of negotiating renewals of leases including the power to enter into arbitration by virtue of the statute of eighteen hundred seventy-five, or for the purpose of accepting the surrender of existing leases and of the negotiation and execution of new subleases, including by way of extension rather than of limitation, leases respecting the reletting of lands where leases have been cancelled for nonpayment of rentals or other default, the correction of errors in description and the letting of lands not under lease for whatever reason.

(c) Make the annual determination of the Indian Lease Tax in accordance with the provisions of section seventeen hundred ninety-four-a of this article.

(d) Make contracts and leases and execute all instruments necessary or convenient for the purpose of carrying out the purposes of the authority.

(e) In the exercise of the power to enter into sub-leases, the sole rent payable under said sub-leases shall be the annual Indian Lease tax imposed pursuant to section seventeen hundred ninety-four-a of this article.

(f) Accept gifts, grants or contributions from any municipal corporation or governmental agency or public utility and to expend the proceeds thereof for authority purposes.

(g) In the exercise of the power to enter into subleases, agreement by such authority shall not be unreasonably withheld, and the authority may neither limit, determine nor control the use of lands sought to be leased.

(h) The authority shall have the power to designate the depositories of monies coming into its hands.

(i) The authority shall have the right to contract for expert professional services in carrying out its duties.

(j) The authority shall have the power to do all things necessary to make the lease between the authority and the Seneca Nation of Indians useful and productive.

(k) The authority shall have the power to enter into arbitration in respect to the negotiation or renegotiation of leases or subleases of any description and in respect to such other matters as the authority may deem desirable.

HISTORY:

Add, L 1969, ch 791; amd, L 1971, ch 631, eff June 22, 1971.

Sub (e), add, L 1971, ch 631, eff June 22, 1971.

Former sub (e), deleted, L 1971, ch 631, eff June 22, 1971.

CROSS REFERENCES:

Rule making procedure, CLS St. Adm P Act §202.

RESEARCH REFERENCES AND PRACTICE AIDS:

1 Am Jur 2d, Administrative Law §§69-84.

Law Reviews:

Government power and New York Indians—A reassessment of a persistent problem of federal-state relations. 8 Buffalo L Rev 1.

Short constitutional history of entities known as authorities. 56 Cornell L Rev 521.

Indian reservation ownership in New York. 32 NY State LJ 134.

§1794-a. Indian lease tax

Each year on or before the first day of March the authority shall determine the total amount of the Indian lease tax, which shall be the sum of (a) the gross annual rental due under the master lease entered into with the nation and (b) the necessary annual expense of administering the authority. A certificate showing the amount of the said Indian lease tax shall be filed with the common council of the city.

Thereafter, the common council shall levy the Indian lease tax at the same time as city taxes on each parcel appearing on the assessment roll which is within the district. The levy shall be made in the same manner as city taxes except that it shall be extended and apportioned on the basis of the assessed valuation of each such parcel in a separate section to be part of and attached to the assessment roll. The Indian lease tax so levied shall be collected in the same manner as Indian rents are presently, (chapter seven hundred eighty-seven

laws of nineteen hundred forty-nine, section one hundred seventy-four-a), and shall be a lien in the same manner as city taxes and all such taxes collected by the city shall belong to the city and be collected by it for its own account.

On or before the nineteenth day of February of each year, the common council shall cause the total amount of the Indian lease tax certified to it on or before the previous March first, to be paid to the Seneca Nation of Indians for and on behalf of the authority.

In the event of the continuation of any of the leases between the Nation and its leaseholders in force prior to the enactment of the master lease from the Nation to the authority, such leases shall continue in effect and rents due thereunder shall be levied and collected in the same manner as now in force and to which collection of the Indian lease tax shall correspond. Any amount of rent received from said pre-existing leases shall be reflected in the total amount of the individual's Indian lease tax and shall be a credit against said tax.

HISTORY:

Add, L 1971, ch 631, eff June 22, 1971.

CROSS REFERENCES:

This section referred to in §1794.

RESEARCH REFERENCES AND PRACTICE AIDS:

71 AM Jur 2d, State and Local Taxation §§82, 83, 208.

72 AM Jur 2d, State and Local Taxation §707.

§1795. Purpose

It is hereby determined that the creation of the authority and the carrying out of its corporate purposes is in all respects for the benefit of the people of the city of Salamanca and is a public purpose and the authority shall be regarded as performing a governmental function in the exercise of the powers conferred upon it by this act and shall be exempt from tax upon its activities.

HISTORY:

Add, L 1969, ch 791, eff May 22, 1969.

RESEARCH REFERENCES AND PRACTICE AIDS:

71 Am Jur 2d, State and Local Taxation §§226-349.

§1796. Bonds and other obligations

The authority shall not have the power to issue bonds or other evidences of indebtedness and neither the state of New York, the county of Cattaraugus, nor the city of Salamanca shall be liable for any obligation arising under the lease between the authority and the Seneca Nation of Indians except that the annual rental called for by such lease shall be construed as a liability owing by the authority and the authority alone from year to year during the lifetime of such lease or any renewal or revision thereof.

HISTORY:

Add, L 1969, ch 791, eff May 22, 1969.

CROSS REFERENCES:

Requirements of negotiable instruments, CLS UCC §3-104.

Investment securities, CLS UCC §§8-101 et seq.

RESEARCH REFERENCES AND PRACTICE AIDS:

Law Reviews:

Public authority bond issues—the need for legislative reform. 21 NY L Forum 183.

§1797. Review

An Indian lease tax assessment may be reviewed in a proceeding brought as provided in article seven of the real property tax law.

HISTORY:

Add, L 1971, ch 631, eff June 22, 1971.

Former §1797, add, L 1969, ch 791; repealed, L 1971, ch 631, eff June 22, 1971.

REPEAL NOTE:

[1971, ch 631] Section seventeen hundred ninety-seven of the public authorities law, repealed by this act, related to the review of determinations of taxes payable under the Salamanca Indian lease authority act in a proceeding under article seventy-eight of the civil practice law and rules. It is replaced by new section seventeen hundred ninety-seven which provides for the review of Indian lease tax assessments in a proceeding brought under article seven of the real property tax law.

CROSS REFERENCES:

Proceeding against body or officer, CLS CPLR Art 78, §§7801 et seq.

RESEARCH REFERENCES AND PRACTICE AIDS:

2 Am Jur 2d, Administrative Law §559.

§1798. Inconsistent provisions

Insofar as the provisions of this title may be inconsistent with the provisions of any other law, general, special or local, the provisions of this title shall be controlling.

HISTORY:

Add, L 1969, ch 791, eff May 22, 1969.

RESEARCH REFERENCE AND PRACTICE AIDS:

73 Am Jur 2d, Statutes §381.

§1799. Duration

The authority and its corporate existence shall continue for a period of ninety-nine years from the effective date hereof and thereafter until all liabilities under any lease with the Seneca Nation of Indians, and any liability by reason of the renewal or amendment thereof shall have been satisfied.

HISTORY:

Add, L 1969, ch 791, eff May 22, 1969.

APPENDIX F(1)

Congressional Record, May 4, 1874

Congressional Record [3581]
May 4, 1874

CATTARAUGUS AND ALLEGANY INDIAN

RESERVATIONS, NEW YORK.

Mr. HARRIS, of Massachusetts, moved to suspend the rules and pass the bill (H.R. No. 3280) to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany reservations, and to confirm existing leases.

The bill was read, as follows:

Be it enacted, &c., That all Indians residing within the Cattaraugus and Allegany reservations in the State of New York shall, for the purposes of this act, be considered and treated as belonging to, and included in, the Seneca Nation of New York Indians.

SEC. 2. That all leases heretofore made by or with the authority of said Seneca Nation of lands within said reservations to railroad corporations are hereby ratified and confirmed; and said Seneca Nation may, in accordance with their laws and form of government, lease lands within said reservations for railroad purposes.

SEC. 3. That the President of the United States shall appoint three commissioners, whose duty it shall be, as soon as may be, to survey, locate, and establish proper boundaries and limits of the villages of Vandalia, Carrollton, Great Valley, Salamanca, West Salamanca, and Red House within said Allegany reservation, including therein, as far as practicable, all lands now occupied by white settlers and such other lands as, in their opinion, may be reasonably required for the purposes of such villages; and they shall cause a return of their doings in writing, together with maps of such

surveys and locations duly certified by them, to be filed in the office of the county clerk of the county of Cattaraugus in said State, there to be recorded and preserved. The boundaries of said villages so surveyed, located, and established shall be the limits of said villages for all the purposes of this act.

SEC. 4. That all unexpired leases of land situated within the limits of said villages when established as before provided, in which Indians, or said Seneca Nation, or persons claiming under them, are the lessors, shall be binding upon the parties thereto: *Provided, nevertheless,* That this act shall not be construed to ratify or confirm leases which, according to the laws or customs of said Seneca Nation, are invalid. And from and after the passage of this act any Indian may lease lands lying within the limits of either of said villages of which, according to the laws or customs of said nation, he is in rightful possession, or to the possession of which he is rightfully entitled, to any person or persons whatsoever, any laws of the United States to the contrary notwithstanding.

SEC. 5. That said Seneca Nation is hereby authorized, by resolution of its councilors duly elected according to the laws and system of government of said nation, or in such other manner as said nation in council may determine, to lease lands within said villages to which, by the Laws or customs of said nation, no individual Indian or Indians, or other person claiming under him or them, has or is entitled to the rightful possession.

SEC. 6. That it shall be the further duty of the said commissioners to cause all lands within such villages now leased, as hereinbefore mentioned, to be surveyed and defined as near as may be, and to cause the same to be designated upon the maps of such villages hereinbefore mentioned and provided for. All leases of lands within

said villages, whether now existing or hereafter to be made under the provisions of this act, shall be recorded in the office of the clerk of said county of Cattaraugus in the same manner and with like effect as similar instruments relating to lands lying in said county outside of said reservations are recorded by the laws of said State of New York. All leases herein mentioned or provided for shall pass by assignment in writing, will, descent, or otherwise in the manner provided by the laws of said State: *Provided, however,* That the rights of Indians in such leases shall descend as provided by the laws of said Seneca Nation.

SEC. 7. That all moneys arising from rents under the provisions of this act, which shall belong to said Seneca Nation, shall be paid to and recoverable by the treasurer of said Seneca Nation, and expended in the same manner and for the same purposes as are other revenues or moneys belonging to said Seneca Nation.

SEC. 8. That the courts of the State of New York within and for the county of Cattaraugus having jurisdiction in real actions, and the circuit and district courts of the United States in and for the northern district of said State, shall have jurisdiction of all actions for the recovery of rents and for the recovery of possession of any real property within the limits of said villages, whether actions of debt, ejectment, or other forms of action, according to the practice in said courts: and actions of forcible entry and detainer, or of unlawful detainer arising in said villages, may be maintained in any of the courts of said county which have jurisdiction of such actions.

SEC. 9. That all laws of the State of New York now in force concerning the laying out, altering, discontinuing, and repairing highways and bridges shall be in force within said villages, and may, with the consent of said

Seneca Nation in council, extend to, and be in force beyond, said villages in said reservations, or in either of them; and all municipal laws and regulations of said State may extend over and be in force within said villages: *Provided, nevertheless,* That nothing in this section shall be construed to authorize the taxation of any Indian, or the property of any Indian, not a citizen of the United States.

The motion to suspend the rules, being seconded, was then agreed to; two-thirds voting in favor thereof.

So the bill was passed.

Mr. GARFIELD. I rise to move that the rules be suspended and the House resolve itself into the Committee of the Whole on the Indian appropriation bill. But I yield a moment to my colleague, Mr. SOUTHARD.

APPENDIX F(2)

Congressional Record, February 2, 1875

Congressional Record [908]
February 2, 1875

CATTARAUGUS AND ALLEGANY INDIAN RESERVATIONS.

The VICE-PRESIDENT. If there are no futher resolutions, the Chair will call on the Committee on Indian Affairs for business.

Mr. INGALLS. I move that the Senate now proceed to the consideration of House bill No. 3080.

The motion was agreed to; and the bill (H. R. No. 3080) to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany reservations, and to confirm existing leases, was considered as in Committee of the Whole.

Mr. HAMILTON, of Texas. The hour of one o'clock is near at hand, and I do not think it is possible to pass this bill through in that time. The committee have other bills that will go through without debate. I want to look a little into this. I have not been able to see the report. When was it reported?

Mr. INGALLS. On the 27th of January. It is the intention of the committee to ask an extension of one hour for the purpose of considering business from this committee.

Mr. HAMILTON, of Texas. It is a very important measure. It involves principles that will apply perhaps to all the Indian reservations in the Union. It is a matter of more importance in my judgment than a great many gentlemen suppose. It is the beginning of the disruption and breaking up of the tribes. I think when the Senate comes to consider the matter in the light in which it can be shown up, the bill will not be passed. I ask the acting chairman of the committee to let it go over for the present.

Mr. INGALLS: The Senator from Texas evidently misapprehends the object and purpose of this bill. It is one of very great importance to the people of the western part of the State of New York, and does not involve any of the consequences to which he alludes. I think that upon proper presentation of the question the Senate will see that the bill ought to pass. I will now ask unanimous consent of the Senate that the Committee on Indian Affairs may have an hour from one o'clock for the purpose of considering bills on the Calendar reported by them.

The VICE-PRESIDENT. The Senator from Kansas asks that the Committee on Indian Affairs be allowed one hour after one o'clock to consider bills reported by that committee.

MR. MORRILL, of Vermont. Does not that require unanimous consent?

The VICE-PRESIDENT. It does.

Mr. INGALLS. Before the Senator from Vermont objects, I beg leave to state that the Senator from California, [Mr. SARGENT,] who expected to occupy the floor this morning on the pending resolution offered by the Senator from Missouri, [Mr. SCHURZ,] as I understand, is not ready to speak, and therefore there is no obstacle in the business of the Senate that would prevent that permission from being extended to the committee.

The VICE-PRESIDENT. The motion requires unanimous consent. Is there objection? The Chair hears none. The bill called upon the motion of the Senator from Kansas is before the Senate as in Committee of the Whole.

The bill was read.

The first amendment reported by the Committee on Indian Affairs was in section 4, to strike out the proviso commencing in line 5, in the following words:

Provided, nevertheless, That this act shall not be construed to ratify or confirm leases which, according to the laws or customs of said Seneca Nation, are invalid.

The amendment was agreed to.

The next amendment was to insert at the end of section 4 of the following:

And in case the said lessors and lessees or occupants cannot agree upon the amount of said rents to be paid by any lessee or occupant, then the said Indians in council shall choose a person, and the said lessee or occupant shall choose a person, and if those so chosen cannot agree upon said rents, then the said referees shall choose a person, and the amount agreed upon by said referees, or a majority of them, shall be the amount of the rent to be paid by the said lessee or occupant.

The amendment was agreed to; there being on a division—ayes 26 , noes 12.

Mr. McCREERY. Mr. President, as the bill reported by the committee makes a radical change in the established policy of this Government in its relations to the Indian tribes, it is worth while to pause long enough to see whether it meets the considerate approval of the Senate.

It has always been held that the Indians have only a possessory title, which is inalienable except to the Government of the United States, and that all leases or conveyances to individuals or to associations were void. The Government has constituted itself the guardian of the red man, and is bound in law, as well as in morals and humanity, to see that his rights are protected against the injustice and the craft of all the world besides; and while it has despoiled its ward whenever convenience or necessity required it, this trust has been guarded to this hour with scrupulous fidelity, and no white man has been allowed under any pretense whatever to acquire right or title to lands within the Indian territory. Can the guardian, then, in the exercise

of a sound discretion, authorized the ward, even by his own act, to dispossess himself of his inheritance?

The second section of the bill confirms all leases heretofore granted, and authorizes other leases for railroad purposes. The third section empowers three commissioners, to be appointed by the President, to [909] assign discretionary boundaries to six villages which may be leased. The fourth section authorizes any Indian rightfully possessed of any land in any of these villages to lease it to any person whatever, and as there is no limit to the lease, it is equal to passing a fee-simple title. And the eighth section gives the Federal and State courts jurisdiction to try causes arising under this legislation.

This is a small reservation, and the title is not and never was in the Government of the United States. There are on this reservation about three thousand Seneca Indians, who have been in peaceful possession for ninety-nine years. They have a civil polity of their own. Their government is administered without ostentation; and even those who are seeking to transfer the jurisdiction have failed as far as I know to indicate a single case where injustice or oppression has been dealt out to any one. They voluntarily entered a community whose laws and customs were different from their own, and if they do not like them their departure might be a smaller calamity than a civil revolution. It can be stated that this bill has been introduced in utter disregard of the wishes of those who are most deeply interested. Three thousand educated, sober, industrious people, even if they are Indians, should have a voice in a measure which may result in their dispersion or their extermination. The protection of the Anglo-Saxon is a fearful and frightful thing to those who are compelled to intrust themselves to his mercy. His guardianship is equal to a possession of the entire estate. And amid the wreck and ruin of the Indian race, amid the broken and violated pledges and treaties which have amused and beguiled it in its

downward course, let the map of America show one spot, small as it may be, where good faith has been maintained for ninety-nine years and where in God's name it should be maintained and upheld to the end.

Mr. HAMILTON, of Texas. Mr. President, I have a memorial here, and I ask that the protest adopted by the Seneca Nation in council against the passage of this bill be read.

The Chief Clerk read as follows:

To the Senate of the United States:

We, the president, councilors, and people of the Seneca Nation of Indians, do most respectfully and earnestly protest against the passage of House bill No. 3080, "An act to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany reservations, and to confirm existing leases," now pending before your honorable body. And we appel to the treaties existing between the United States of America and the Senecas, and insist that under their terms we should be protected against any legislation which deprives us of any part of the lands so guaranteed to us. And we would further state, as to the existing leases referred to in said House bill No. 3080, they never had any validity, and it was so understood by all parties to them when they were executed; all leases of Indian lands were prohibited by the laws of the State of New York, (see laws 1813, 1821, and 1845;) and these leases were made void in law and equity by the United States laws for 1834, sections 11 and 12; and more, such leases were prohibited by the laws, customs, and usages of the Seneca tribe and nation; and it was so distinctly understood, by the parties who applied to the councilors of the nation to ratify them, that the councilors had no such power or authority; yet this bill proposes to make valid not only those acts forbidden by the statutes of the United States, but also forbidden by the laws of the

State of New York, and in violation of the rights, customs, laws, and usages of the Seneca Nation who own the land so affected, and by so doing force upon this nation these void, forbidden, and worthless leases and compel them to carry them into effect and to that extent deprive said nation of their lands, in violation of treaty stipulations.

And your petitioners would further state, as to the powers conferred in said House bill No. 3080, in relation to leases hereafter to be made, that the Seneca Nation holds all of said lands in tribal or national capacity: that their lands have not been allotted or divided; all the right any individual Indian has therein is confined to possession; that to confer the right of leasing upon individuals would work injustice among our people. That such an act would compel Indians to go into the courts of the United States, or of the State of New York, to obtain possession of their lands if a white man disputed it, as those tribunals would have sole jurisdiction to try all questions of right to your petitioners' land, and thus our courts would be legislated out of jurisdiction to try actions concerning the possession of their own lands.

Given in national council at the court-house on the Cattaraugus reservation, June 3, 1874.

WILLIAM NEPHEW,
President.

Names of the councilors, Seneca Nation of Indians: George Dennis, William Krouse, Isaac Halftown, Wallace Halftown, Peter Snow, Casler Redeye, Peter Sundown, William Redeye, John Jack, Henry Huffpur, Andrew John, jr., Adam Pierce, Hiram Dennis, Joseph Jemerson, Samuel Jemerson.

CEPHAS TWO GUNS,
Clerk for the Seneca Nation of Indians.

Mr. HAMILTON, of Texas. It seems to me, Mr. President, that the Senate should listen to a protest of this sort by the entire Seneca Nation, based on the laws of the United States and on the treaties of the United States, which are paramount, I undertake to say, to the claims of any railroad corporation, it makes no difference where it may be. This bill is asked for some railroad companies, to guarantee to them concessions that they have squeezed out of the Indians under one form or another—nobody knows how—which were temporary, too, as the Indians understood. I have been conferring with one of the agents of the tribe, and they understand that these leases made by them are of a temporary character, ground leases, and that the lands are to be returned to them with the improvements upon them at the termination of the leases. You come in here now and ask the Government of the United States to enact a law to compel them to surrender these lands to the parties who hold the leases and who are now living upon them. They have not divided their lands. Under their treaties with the United States they are living upon their lands in common, enjoying the rights and benefits, as they suppose, guaranteed to them by the treaty.

As I said a while ago, this is only a beginning; it is an entering-wedge. The Seneca tribe is not very large; it is surrounded by a dense population in a very important section of the country, who doubtless want that territory in order to construct other roads through it; and this bill, I think, provides for as many railroad companies invading that territory as may choose to invade it. They are given the right of way through it in any direction; and then they are given the right to condemn so much property as is necessary to make a village around every depot in the territory.

Mr. President, if an Indian reservation, under the stipulations of a treaty with the Government of the United States, is not sacred from railroad corporations, what is sacred? Where will they go next? What will they take? If the Congress of the United States cannot resist demands of that sort upon the wards of the nation, you had better take the territory from them, kick them off, give it to the white people, and let the Indians go on the plains and depredate for a living. That is what it will come to. I do not believe that with all the treaties you can pile up here, with the Indians now in possession of the territory west of the Arkansas, it will be possible to stay the organization of a territorial government there within the next twelve months. It is pressed on all hands by the press of the country, by dispatches from here, by some of the committees, and by the officers of the Government. The whole Interior Department is engaged in the scheme.

Mr. President, I for one will stand in my place here and insist that it is public plunder; it is nothing else. The country is not needed for the use of the white man. It is not necessary for his use. It is not necessary for the commerce of the country. It is not necessary for anything except a raid; or more than one raid, if you please. That is at the bottom of it; and it is at the bottom of this. Nobody but a railroad corporation has ever asked this thing, and if I had time to turn to the treaties, which I have not here and cannot put my fingers on just now, I believe I could show that these Indians are protected under solemn treaties with the Government of the United States. It has leaked out that the State government of New York has enacted some laws in regard to these leases and in regard to the management of the territory there, but in the courts of the country they cannot enforce them. The State

government has not the right to make laws that will bear on the Indians, and hence they come to the Congress of the United States to do it. Will Congress do it? If it is a foregone conclusion, if that is the intention, all we now can do is to enter a protest against it, and I do enter my protest most solemnly.

Mr. INGALLS. Mr. President, I profess that I have been very profoundly impressed by the arguments made by the Senator from Kentucky and the Senator from Texas upon this bill. I respectfully submit that both of them are based upon an entire misapprehension of the principles involved and the object that is here sought to be accomplished. It is not necessary at this time to attempt to discuss the entire Indian policy of this Government. In no sense whatever is that question here under consideration, and none of the objections that have been urged by the Senators who have spoken upon this bill can be properly urged against it when it is once properly and fairly understood.

The Seneca Nation is a remnant of what was known as the Six Nations who originally occupied a portion of the territory now situated in the western part of the State of New York. There are now to-day twenty-seven or twenty-eight hundred of them left, situated upon two reservations, one of them known as the Allegany or Cornplanter Reservation, and the other as the Cattaraugus reservation. Upon the former are about eight hundred Indians, and upon the latter the rest of what is now the Seneca Nation.

The Allegany reservation is a tract of land forty miles in length and one mile in width, lying along the banks of the Allegany River. It is crossed by three railroads, the Erie, the Atlantic and the Great Western, and the Rochester and State Line. The two former railroads, the

Erie, and the Atlantic and Great Western, intersect at a point on the Allegany reservation, where a town has been located that is known by the name of Salamanca, and has a population of between two and three thousand people. These railroad corporations entered upon this reservation with the consent of the Seneca Nation first thereto obtained. The condemnation money was agreed upon between them, and the amount has been fully paid into the treasury of the Seneca Nation. A certain number of the nation, endowed with the attributes of their white brothers to a certain extent, understanding that at the point where these railroads intersect a town of some magnitude would probably grow up, obtained, under the customs and with the consent of the council of the Seneca Nation, the right to lease the land where that town is now located and did so to a great number of people and to the railroad corporations. Upon this town site improvements have been made to the extent of perhaps a million and a half of dollars; and also along the line of these different railroads other points have grown up, including the villages of Vandalia, Carrollton, Great Valley, West Salamanca, and Red House, embracing an aggregate population of fifteen hundred or two thousand persons more.

This bill does not in any sense propose to divest the Seneca Nation or Indians of the Seneca Nation of their right to these lands. It does not propose to deprive them either of their title as a tribe or of the individual rights which they have acquired under the treaty by reason of the leases granted to them by the council. It simply proposes that the leases which have been made by these Indians them- [910] selves, by their own consent, shall be ratified and confirmed, and held to be valid and binding upon the parties who have voluntarily made these contracts.

Now, if the sentimentality or the philanthropy of the Senator from Texas or the Senator from Kentucky can find any objection to a course like that, if it can be pointed out, I for one should certainly be gratified, and I have no doubt the Senate would be very much instructed.

Mr. BOUTWELL. I should like to ask the Senator from Kansas whether, at the time these leases or arrangements were made between the Indians and the railway companies, and, as it appears from the reading of the bill, private parties, it was not known that the Indians had no legal right to make these arrangements?

Mr. INGALLS. I beg the Senator's pardon. There is a history about this reservation that is of great antiquity and of no inconsiderable interest.

Mr. BOUTWELL. Let me ask the question then more directly, whether there was any legal right in the Indians to make these arrangements, or leases, or whatever they were?

Mr. INGALLS. I will state to the Senator that the lands covered by the Cattaraugus and Allegany reservations differ from that covered by most Indian reservations in this, that while in most Indian reservations the fee, or what is known as the pre-emption title, rests ultimately in the Government of the United States, in this instance the title, or fee, or pre-emption right rests in a corporation known as the Ogden Company; but the title of the Ogden Company is entirely subordinate to the possessory right or the right of occupancy in the Seneca Nation of Indians so long as they shall survive. There is no limitation whatever upon the power of the Seneca Nation to provide for the lease of these lands, or for the temporary use and occupation of these lands, either to individuals of the tribe or to other lessees. Do I answer the Senator?

Mr. BOUTWELL. If that be so, what is the need of legislation confirming these leases?

Mr. INGALLS. I will state to the Senator what the need is. It is because the State of New York, through her tribunals, has determined that legislative action heretofore had by that State attempting to confirm and ratify these leases was invalid from the fact that Congress alone has jurisdiction over Indian affairs.

Mr. BOUTWELL. Now, then, let me ask whether, with this historical explanation and statement, it does not appear that all these proceedings were invalid as being without authority of law or contrary to law? Is not that the conclusion to which the Senator himself arrives when he comes here and asks Congress by its act to ratify that which, having been done, the courts of the State of New York have said there was no authority for doing?

Mr. INGALLS. My understanding is, not that these leases were illegal, not that they were unlawful, but that they were in one sense outside of the law, there being under existing statutes or treaties no authority under and by virtue of which they could be made. Congress is asked not to do an illegal or an unlawful act, but simply to ratify acts that have been performed by the consent of the Indians themselves. There is not upon either of these reservations at the present time a single white person against the consent or without the knowledge of the Indians. They are all there with the consent of the Indians. They are in no sense whatever trespassers or invaders.

Mr. BOUTWELL. But is it not also true that at the time these people went there the Indians legally were incompetent to give consent, and therefore that consent, whether given or not, is of no value legally considered?

Mr. INGALLS. About that I suppose there cannot be much difference of opinion between the Senator and myself. That the Indians may not at that time have been legally competent to contract I am not prepared to say; but they did assume to contract; they entered into contracts with the railroad corporations and with the white settlers who now occupy these towns to the number of between three and four thousand; and all that is asked of Congress is to declare that those contracts to that extent are valid, and to provide further for a forum in which differences upon this subject may be litigated and adjudicated.

Therefore, Mr. President, I say that the argument which is advanced by the Senator from Kentucky and by the Senator from Texas on this subject is entirely without foundation, because there is no attempt whatever to deprive these Indians of their rights, either as a tribe or as individuals, but simply to enable these contracts to be held, ratified, and confirmed as binding upon the parties who voluntarily made them. I should like to inquire if there is any law that would render a contract binding upon a white man and at the same time declare the Indian at liberty to violate it whenever he pleased?

Mr. PRATT. I wish to inquire of the Senator from Kansas who is raising any question about the validity of the leases to the railroad companies and to individuals and where the necessity of this legislation at this time, unless the title of the lessees be brought in question?

Mr. INGALLS. The Senator's question is very pertinent. It arises upon this ground: The railroad corporations have constructed their lines and laid their tracks through this reservation; the towns that I have named have been constructed along the line and at the intersection of these roads; improvements to the

amount of over $1,000,000 have been made under these leases. These leases have been held by the courts of New York to be without authority. The courts of that State having determined that the Legislature of New York was not competent to act upon this subject, jurisdiction having been ceded to the General Government, the courts themselves have held that they have no authority to act when disputes arise between the lessor and the lessee. It is the fact in all these transactions, of course, that disputes are continually liable to arise. As the Senator knows, between landlord and tenant it is necessary often to have jurisdiction for the action of forcible entry and detainer. When a lease terminates or when a tenant refuses to pay his rent, it is necessary to have some tribunal where that claim can be enforced. But as the law now stands, when these difficulties arise, there is no forum where these questions can be adjudicated. Therefore these men who, trusting in the good faith of the Indians, relying upon the contracts they made, have gone upon these reservations, invested their money, and made improvements to the amount of millions of dollars, are entirely at the mercy or caprice of the Indians or of white men who may desire to obtain the property heretofore held by other lessees.

Mr. HAMILTON, of Texas. Allow me to ask the Senator a question.

Mr. INGALLS. I wish to have a moment longer to answer one other objection urged by the Senator from Indiana. It is frequently necessary that policies of insurance should be issued upon the property that has been placed on these reservations under these contracts, and the Senator is aware that so long as the title to the property upon which these improvements stand is in dispute insurance companies refuse to issue policies of insurance. Therefore the whole business of that country

is entirely interrupted and suspended and practically destroyed; not because these parties themselves are trying to avoid or abrogate the contracts, but because there is no forum in which these questions can be determined. I yield now to the Senator from Texas.

Mr. HAMILTON, of Texas. I wanted to ask the Senator whether it appears that any of these tenants have been ejected by the Indians. I do not learn that from the bill, and I have not been able to learn it from any quarter.

Mr. INGALLS. They have a very original and novel and forcible method of trying actions of ejectment and forcible entry and detainer in that country. When a tenant refuses to pay his rent, the common method is for the citizens in the vicinity to gather together to the number of one or two hundred and proceed *en masse* to the domicile of the party who refuses to pay the sum that is due; they enter; if he refuses to pay his rent they set his furniture out of doors in the street and quietly notify him that if he returns more forcible measures will be resorted to. They then put the subsequent party in possession, and he is retained there by the same force.

Mr. HAMILTON, of Texas. The Senator remarked that the lessees had paid the whole amount of the rent and that it went into the treasury of the Seneca Nation. I want to ask him if they paid for the whole term of the lease—

Mr. INGALLS. I referred to the railroad corporations.

Mr. HAMILTON, of Texas. Or whether they paid a rent annually.

Mr. INGALLS. I referred to the railroad corporations. The Senator understands that a right of way is purchased or secured by the payment of a certain

specified sum which secures the right so long as the railroad company shall occupy the land for the purposes for which it was condemned. The Senator will observe that there is no allegation whatever made by any Indians or by the Seneca Nation of Indians that these contracts have not been fairly and squarley lived up to and observed.

Mr. PRATT. At that point, will my friend from Kansas allow me to ask another question?

Mr. INGALLS. Certainly.

Mr. PRATT. I understand him to say that the leases under which the railroad companies and other parties claim were made by the Seneca Nation of Indians.

Mr. INGALLS. I did not state exactly that, but I will hear the rest of the Senator's question.

Mr. PRATT. If that be so, I beg to understand what is the meaning of the protest that we have heard read from the Clerk's desk this morning from this nation of Indians, protesting against this legislation which confirms these leases?

Mr. INGALLS. I will state to the Senator that, as I understand it, Seneca Nation, as I mentioned in the beginning of my remarks, at the present time occupy two reservations, the Allegany or Cornplanter, and the Cattaraugus; the Indians residing on the Cattaraugus reservation understanding that the property on the Allegany reservation would ultimately become more valuable, some of them came down to the Allegany reservation, and before these improvements were made, or before they had become as valuable as they are now, they secured what may be called concessions or individual rights from the council at the very points where these towns now exist. They then proceeded to sublet to other lessees, and they are now in the enjoyment of very considerable revenues and income

from the thrift that they exercised in the initiation of these proceedings. These protests, as I understand, in reply to the Senator from Indiana, come very largely from Indians who live upon the Cattaraugus reservation, and who are a little dissatisfied and discontented that their friends who have obtained concessions on the Allegany reservation [911] are in the enjoyment of so much larger income from them than they themselves are. And in this connection further I would state that the Seneca Indians do not belong, as the Senator from Kentucky would have us believe, to the painted and moccasined and blanketed race. By contact with civilization for the last hundred years they have developed into a very reputable manhood; they wear the garb and adopt the customs of civilization; they live in houses; they cultivate farms; they carry on all the avocations of civilized life; and I have on my desk at the present time a petition that is signed by members of that nation, representing a very great majority of all that portion living upon the Allegany reservation, assenting to the principles involved in this bill.

Sir, the measure that is proposed by the committee is so equitable and so just, and is so little amenable to any of the objections urged against it by any Senator who has spoken, that I trust there may be no further objection to its passage.

Mr. HAMILTON, of Texas. I desire to say a word in answer to the remarks of the Senator from Kansas, I asked him the question whether it appeared that any of these parties had been ejected from their premises. He answered me that they had a very summary process of ejecting men, but he did not say it had ever been applied.

Mr. INGALLS. If I omitted that portion of my answer, it was inadvertent, and I will state to the Senator, so that he may have no objection to urge on

that score, that that condition of things exists, and that that method has been repeatedly resorted to.

Mr. HAMILTON, of Texas. I did not know the fact, and I wanted to inquire as to it. The representative of the tribe here denies it. He says that so far as he knows it never has been done in any case, but they do want to resume their rights over the land as soon as the leases expire; that they understood that each lease was in the nature of a ground-rent simply, and whatever improvements were put upon the land would come back to them at the end of the lease, and that then they would be able to lease it out annually and get in a revenue for their support.

Mr. INGALLS. Does the Senator from Texas intend to have it understood here that the representatives of that nation have claimed to him that they allowed the railroad corporations to go through that land with the understanding that the railroads were to revert to them, with all their improvements?

Mr. HAMILTON, of Texas. I did not say that.

Mr. INGALLS. I supposed not.

Mr. HAMILTON, of Texas. I was speaking simply about the villages, the town lots around the stations of the railroads. As to the arrangement made with the railroads themselves, I have no idea that that was legal either.

Mr. FENTON. My friend from Texas is mistaken also in regard to the lessees in the village of Salamanca and the other villages referred to in the bill. The lessees have generally occupied these lands with the expectation of continuing or having their leases renewed. Indeed, more than twenty years ago the Legislature of the State of New York assumed to confirm the contracts or leases made by the Indians to individuals and to railroad corporations, and under this supposed authority parties

have entered upon these lands and have made permanent improvements. It has not been expected by the Indians, nor by these white people, that these improvements would revert to the Indians.

While I am on the floor, if my friend from Texas will allow me, I will say that this bill simply proposes to confirm what the Indians themselves have done. There would have been no application to the Congress of the United States nor any difficulty in regard to them in any way I suppose, if the authority exercised by the State of New York had not been interrupted by a decision of the Supreme Court of the United States six or seven years ago. Hence these parties in interest, these white people who have settled upon or occupied some of these lands under leases from the Indians and paying them the amount agreed upon annually, come here and ask Congress to confirm these leases.

Mr. President, I will not occupy the time of the Senate in making an argument in favor of this bill. I simply state that there is a public necessity for some action upon the part of Congress, in that the Legislature of the State of New York has not jurisdiction in the case. It is not intended to do any injury to the Indians. I do not believe that there are any white people upon these lands or around about them, or in the whole State of New York, that want to disturb the Indians in their present rights or privileges. I do not believe there is any serious objection to the bill, and therefore trust to a favorable vote of the Senate.

Mr. HAMILTON, of Texas. I have listened with attention to everything that has been said by the Senator from New York and the Senator from Kansas on this bill; but the question returns, why it is that legislation is sought here to ratify contracts made between individuals and these Seneca Indians. A great

many of these contracts have been made by individual Indians; that is what the representative of the nation tells me here. I inquired how it happened. I said, "Have you divided the land?" "No." he replied; "the land is held in common, but we have a regulation by which, when a man selects a place and settles upon it and improves it, it is yielded up to his own management and control." The agent who is here is the lessor in perhaps twenty or thirty cases; some of his leases, he says, have expired, and the parties want to renew them, and he will not renew. They seek legislation here, as he thinks, to compel him to renew his leases, because they have made valuable improvements upon them. Whether that be so or not I do not know; but I appeal to lawyers here and ask them, because I am not a lawyer myself, whether the Government of the United States or the State authorities would compel a minor to ratify his contracts and hold them good in the courts of the country. We have always regarded the Indians as minors, as wards of the nation, incapable of coping with the shrewdness and intelligence of the white men around them; and where they have been inveigled into contracts shall we insist on their enforcement? The Senator from Kansas remarked a while ago that some of the most intelligent among them came down into the reservation and procured the control over certain tracts of country in anticipation of the cessions which would be laid off there. Evidently those men were in the interest of the railroad companies; they found out what was going on; they were in "the ring;" and they went down there and secured leases, and then sublet them to parties who are now in possession of them. I beg to say to the Senator from New York that the people who once occupied very large districts of country in the central part of the State of New York, and as they supposed owned them, had a valid title, leased out their

lands for terms of years, longer or shorter; and what was their experience? How much of that land went back to the patrons who owned it originally? It was absolutely taken from them by the lessees, body and soul. They never got any of it, as I understand.

Mr. FENTON. I do not know of any such case as my friend from Texas refers to. I know in the six or seven reservations in the State of New York there has been no trenching upon the lands without the consent of the Indians; nor have they at any time found fault, that I know of.

Mr. HAMILTON, of Texas. I was not alluding to the Indian reservations, I was alluding to Van Rensselaers and other persons who obtained grants of land under the Crown of Great Britain or from the Dutch in ealry times, and whose lands have passed from them, having been taken by the parties that leased them, and that hold them to-day, as I understand. I happened to be in New York when that question was very rife and disturbed the State, when there was a lease war. Now if white men of great wealth, of great eminence in the country, whose descendants are numerous and powerful, can not protect themselves against a crowd of men who hold in defiance of law, what do you suppose the Indians will do? I believe if this bill passes these Indians will be deprived of the last acre of land that they own in that territory. That is my judgment.

Mr. INGALLS. They do not own a foot of land in either reservation. Therefore, they cannot be deprived of what they do not own. They have merley the possessory right of occupancy.

Mr. HAMILTON, of Texas. That is a good right; it is a good title under the Government of the United States as long as they occupy it.

Mr. INGALLS. Certainly.

Mr. HAMILTON, of Texas. But this is a step in the direction of kicking them off it. That is the point I make.

Mr. INGALLS. I wish the Senator would point out that particular portion of the bill whose result will be, as he declares, the kicking off the Indians from these reservations.

Mr. HAMILTON, of Texas. I simply mean to say that where a railroad company can invade a sacred reservation of this sort and get the rights that this bill proposes to give them now, they will find no difficulty in getting just exactly whatever they ask at the hands of Congress.

MR. INGALLS. Railroad companies went on there, as the Senator well knows, with the consent of the Indians, and have paid them the price agreed on.

Mr. HAMILTON, of Texas. I answer that the Indians are minors, and ought to be protected against encroachments on the part of railroad companies; and if they are not protected, the Government simply abandons them; that is all.

Mr. INGALLS. When the Senator uses the term "invasion," he is entirely outside of the record.

Mr. BOGY. Mr. President, I think that the object of this bill, as well as the effect of it, has been very much misunderstood. As a member of the Committee on Indian Affairs, I paid some attention to it and examined it with some care. The object is not in any way to affect the tribal organizations of the tribe who occupy these reservations, nor will the effect of the bill be so at all. The whole object of the bill is simply to enable these Indians in their tribal organization to make leases which may be considered legal and binding. Because it has been decided by the courts that the State of New York could not confer such authority, the parties are compelled to come to this tribunal for the authority.

Mr. BAYARD. May I ask the Senator from Missouri a question? If, as he says, this bill is not intended to disintegrate the tribal organization of these poor people, why is it that in the fourth section it is provided that any Indian may lease land lying within the limits of the villages which according to the laws and customs of the nation he is in rightful possession of, which enables that Indian individually to make leases for the land which is to-day properly subject to the tribal control and tribal organization? If you allow the individual to emanicipate himself from the tribal organization, you necessarily disintegrate that organization entirely; and I ask the honorable Senator how can he say that this bill does not strike at the very root of the tribal organization when it allows an individual [912] Indian to lease his lands without regard to the laws of that organization?

Mr. BOGY. I will answer the Senator, although it is not in the line of the argument I intended to present, and as I meant to be brief, it is some disturbance; but I will answer. I think the very terms of the clause protect the Indians:

And from and after the passage of this act any Indian may lease lands lying within the limits of either of said villages of which, according to the laws or customs of said nation—

Recognizing the laws and customs of the nation—

he is in rightful possession.

Not as a mere trespasser; but if any Indians are in possession of any town lots in any of these villages, which possession is in accordance with the laws and customs of the tribe which are the common law of that people, they may lease them. As I understand it, if any one Indian be in possession of any of these town lots, which possession is in accordance with the laws and

customs of the Indians, an individual right is thereby acquired by that Indian which he can transfer by the way of a lease; but, mind you, sir, this individual right is confined to villages and does not apply to the extended reservation. It is confined to town lots in the villages of which possession has been acquired in accordance with the laws and customs of that tribe, which are the common law of that tribe and binding on them. It says:

Of which, according to the laws and customs of the nation, he is in rightful possession, or to the possession of which he is rightfully entitled, to any person or persons whatsoever, any laws of the United States to the contrary notwithstanding.

The law of the United States referred to here is simply this, which in my estimation does not at all apply, as I could demonstrate if time was allowed to me, to a reservation of this character at all. The law is meant to apply to those reservations in the West that are created by statute law contemporary with the settlement of the Indians on them, and not intended for a reservation of this kind, which dates back prior to the formation of this Government. But let that be as it may, it is not presented as a point in this controversy.

But, sir, I go further. Pursuing the line of argument which the Senator from Delaware has indicated, I would say that it would be better for Indians situated as these are that the tribal organization was at an early day done away with. I will go as far, and perhaps from circumstances attending my early experience I might be disposed to go further, than any Senator on this floor in favor of protecting the Indians; but at the same time I draw a very wide distinction between the wild Indians of the West, what are called the blanket Indians, and those Indians who are now in the midst of old, populous States, already far advanced in civilization. It would be a

God's blessing to these Indians if they could at an early day be absorbed in the white and superior civilization surrounding them. It is their misfortune that they are keeping up a tribal organization in the midst of the people of the State of New York. While it may be a blessing to the Indian in the wild woods and mountains and valleys of the West, where the white man's government has not extended and cannot for the time being be extended, to maintain a sort of government which he calls a tribal government—while it may be a blessing to him there because he has no other means of protection, no other means of having any government at all, and as some government is better than none, it might be well to maintain the tribal organization; yet Indians situated as the Seneca Nation are—who are advanced in civilization, who have no longer the habits of the wild Indian, who are dressed like the civilized man, many of whom do not even speak their own native language and speak nothing but the English language—ought not to continue to be deprived of citizenship. A line of demarkation exists between them and the white people of New York which is entirely to their detriment, and it would be a good deal better if they were absorbed in some equitable mode in that mass of white civilization which inhabits the State of New York.

I make these remarks in answer to the argument suggested by the Senator from Delaware. I had not intended to argue this point at all: but I am profoundly convinced that it would be better for these Indians, as it would be infinitely better for the Indians on the Indian Territory west of my State and of Arkansas, that they should at an early day be embraced within the influences and the power and the protection which this Government affords, and their tribal organization done away with

entirely. The day has come, it is upon us now, when the Indians occupying the territory immediately adjoining my own State and the State of Arkansas and south of Kansas should be organized into a government. It ought to be done at this very session. I know that some of those Indians object to it; I know that many white men among them object to it for selfish purposes; but for their own great good, for their future hereafter, so they may be redeemed from destruction at an early day, it would be a great deal better for them if they were organized into a government—the white man's government.

These two reservations are in the midst of a State having five millions of people. The Allegany reservation is forty miles in length and one mile in width; and as to the Cattaraugus reservation I do not remember its length, but it contains some twenty thousand acres. Here are together about fifty thousand acres of land in the possession of less than three thousand Indians, and of that land to-day there are not two thousand acres in cultivation. Of that whole fifty thousand acres of land, as fine land as there is in the State of New York, there are not two thousand acres in cultivation.

The PRESIDING OFFICER, (Mr. FERRY, of Michigan, in the chair.) The extended morning hour has expired, and the Senate resumes the consideration of the special order, which is the resolution proposed by the Senator from Missouri.

Mr. ALLISON. I ask unanimous consent of the Senate to complete this bill. It will not take much longer, I think.

The PRESIDING OFFICER. Is there objection?

Mr. HAMILTON, of Texas. I object.

Mr. FENTON. Let the vote be taken.

Mr. INGALLS. If the Senator from Texas objects, I move—

Mr. HAMILTON, of Texas. I make no objecton.

The PRESIDING OFFICER. The Chair hears no objection. The bill will be continued before the Senate as in Committee of the Whole.

Mr. BOGY. I said at the beginning of my remarks that it was not the object, nor would it be the effect, of this bill to destroy the tribal organization, saying at the same time, understanding the subject as I do, that with my views it would be better for those Indians if the tribal organization was at an early day done away with. But this is not the object of the bill, nor will the bill have that effect. The second section says:

That all leases heretofore made, by or with the authority of said Seneca Nation, of lands within said reservations to railroad corporations, are hereby ratified and confirmed.

Leases made by whom? Leases made by the nation as a tribe, respecting the organization, legalizing their acts, ratifying their acts, not going in opposition to what they have done, but ratifying it, thereby legalizing the very tribal organization itself. And why should we do this? The reason is simply this: These two reservations are in the way of the railroads tending from the East to the West. One of them is forty miles in length. Of the other I do not remember the length, but, although not quite so long, nevertheless it is a reservation having some twenty thousand acres. On these reservations towns have sprung up. On the Allegany reservation there is the large town of Salamanca, having about three thousand population, the towns of Great Valley, Carrolton, Vandalia, Red House, and other villages and towns; and depots have been built there by the railroads that have passed over these lands. These towns of course are occupied principally by white men; but because the title to these lots is uncertain, no improvements of any

character can be made. Yet nobody is in possession of any of these lots except by a kind of legal possession; that is, the Indians who formerly occupied these towns, and who were in possession of these lots as their homes, have sublet them, and the object of this bill in the second section is to ratify this subletting of town lots in the different villages; and I cannot see why it should not be done. Is it the true way to maintain a wall there between the people of the Atlantic sea-board and the West by an Indian reservation a mile in width intercepting the West? It seems to me a most absurd idea; and if it were true that it would affect a few hundred Indians, I say it would be better for the great public good that their rights should yield to the great and more important right. There is no doubt about that. There are but eight hundred Indians upon the Allegany reservation, containing upward of twenty-five thousand acres of land, there being less than a thousand acres under cultivation on that reservation. They have allowed these railroads to penetrate their land; they have allowed these people to go to these towns; but they are not competent to give the proper title, and the whole object of this bill is to legalize what they themselves have voluntarily done.

I am not aware that the council of the tribe inhabiting the Cattaraugus and Allegany reservations has as a council objected to this bill. A few individual Indians have, because they have gone to me; but I am not aware that the council of the Seneca Indians belonging to either of these reservations has at any time objected to this bill. I do not think the protest which was put in by the gentleman from Texas is a protest from the Indians as a tribe. I do not so understand it. I think I saw the protest before. I could not hear it very well from my seat, but I presume it is the same document which I saw, and I

think it is a protest alone by a few individuals, belonging to the tribes. The tribe as a tribe is in favor of this bill, and it is greatly to their interest.

These Indians now are neither hunters nor farmers. They are living from hand to mouth upon an immense domain producing very little, doing very little, and are in a very inferior condition. It is for their benefit that these towns should spring up on their reservation, for they will advance in a higher civilization. It would be for their benefit if the right of citizenship were conferred upon them as soon as possible; and it would be for their benefit if the tribal organization was taken away from them as soon as possible. There is no question about that.

I heard the remarks of my eloquent friend from Kentucky [Mr. McCREERY] with a great deal of pleasure, and I am very glad to find that others besides myself are friends of the Indians on this floor. I hail his assistance in this matter with a great deal of pleasure indeed; but his argument applies to reservations made for what we call in the West "blanket Indians." It applies to reservations set apart by the Government as temporary homes for the wild Indians of the prairies and not for Indians like the Senecas who are somewhat advanced in civilization. The law prohibits the entrance of a white man on the res-[913] ervation of the wild Indian, and why? He is supposed to be a barbarian. He is supposed not to understand the language of the country. He is supposed to have nothing in common with the white man, and therefore calls for the protection of the Government. That has been the theory of the Government. I am very sorry to say that the protection we have afforded to him has been very fatal to him; but I would say, however hard the administration of the Government has been on Indians, the intention of the

Government from its very earliest days was paternal and was intended to be kind to the Indians. The object has never been carried out in good faith by the agents of the law. The intention has always been to protect the wild Indians of the prairies. For those wild Indians of the prairies the only protection is to keep away the white man; but that argument does not apply to the Indians residing in the State of New York. That argument does not apply to the Indians residing on the reservations west of the State of Arkansas. Some of those men have come here and received fees as lawyers as large as the best lawyer in this Senate ever had. I introduced a resolution yesterday, which was passed to-day, calling upon the Secretary of the Interior for information as to why a fee of $50,000 was paid to one of those lawyers who resides on one of the reservations in the West. It shows that that fellow could take care of himself, I think, and that it is not well to call him a ward of the Government. I think he can take of himself. In other words, I think it is very hard for us to take care of ourselves and to take care of him. I think the Indian has the advantage, and I think in that very transaction we required guardianship more than he did. So it is with these Seneca Indians. A short time ago a person who occupied the head of the Bureau of Indian Affairs was an Indian from this very tribe, Colonel Parker, a man of education, a man of intelligence, and a man of decided ability. He was an Indian belonging to this very Seneca tribe, coming from one of these reservations, having been born and reared among them. Those of the Seneca Indians who have come here are as intelligent as white men are, and they can take care of themselves.

But let that be as it may, the intention of this bill is not to affect the tribal organization at all. It is to authorize them to yield to the wants of the day, to the

march of improvement in building up railroads and building up towns, manufactories, and all those things which follow the trial of the white man's civilization. It is not to compel them to do it, but to enable their council to do it. It is not to compel them, I repeat, but to authorize their council as a council to lease these lands. Not to sell them, but merely to make leases, that railroads may penetrate these reservations, that towns may be built; and why should it not be done? The only doubt I have had on this subject at all has been as to the power of the Federal Government to authorize them to do it; but that is no question for me to discuss here. The Supreme Court, in 5 Wallace, indicates that the power is in the Federal Government, and acting on that dictum of the Supreme Court this bill is presented to Congress.

Mr. President, after a careful examination of this bill in its different sections I can see no objection to it whatever. I think it is due to the people of Western New York, it is due to the spirit of the age, it is due to the men who are building your railroads and your towns, that these reservations shall be thrown open and not be kept there isolated spots, surrounded with a sort of Chinese wall, impenetrable to the white man and to civilization. I would make the same argument—and I hope to have an opportunity of making it some of these days—in relation to the vast territory—rich in everything, rich in soil, rich in minerals, delightful in climate—immediately west of the State of Arkansas, a territory of upward of thirty million acres of land, which is occupied by some sixty or seventy thousand Indians, who are there in a state of half civilization, without any ambition or life in them.

I have examined this bill with some care. Although it does not relate to my section, yet I do believe it is a proper bill and should be passed, and that it does not take anything from these Indians whatever.

Mr. ALLISON rose.

Mr. PRATT. Before my friend from Iowa takes the floor, I would be glad to offer an amendment, to come in at the close of the second section of the bill, which will remove some objections in my own mind and in the minds of others.

The PRESIDING OFFICER. The amendment will be reported.

The CHIEF CLERK. At the end of the second section of the bill it is proposed to insert:

Provided, however. That all leases now made, or hereafter to be made, pursuant to this act, shall be subject for their validity to the approval of the Secretary of the Interior.

Mr. ALLISON. I would suggest to the Senator from Indiana that that amendment had better be made at the end of the fourth section, if it is made.

Mr. President, this bill is comprehended, within a very small compass. Several years ago a number of railways desiring to traverse the State of New York were obliged to cross this Indian reservation, and pass along it for some distance, it running in the Allegany Valley. In doing this they procured the right of way. In addition to this, towns along the reservation at various points sprang up; and under a mistaken notion of the law, the Legislature of the State of New York authorized, or rather ratified, leases made by the Seneca tribe to people who sought to build up these towns. The Supreme Court of the United States decided, I believe, some years ago, that the State of New York had no authority to ratify these leases, and that there was no power except in the United States to ratify them. Now, the people on these reservations, in these villages, have made large improvements, and the only object of this bill is to authorize the leasing of grounds within these villages.

Perhaps the whole authority does not extend over one thousand acres of the vast area belonging to the Seneca Nation. That is all there is in this bill. It simply authorizes the people who have gone on there under a mistaken notion of the law to have all the improvements they have made there confirmed by the action of Congress, so far as it has authority to ratify them; and whatever questions of dispute may arise, either under this law or any provision made between the Indians and these settlers, shall be adjudicated in the United States courts. That is all there is of this provision. It does not disturb the tribal relation of these Indians at all. It does not propose to interfere with any right that they have not voluntarily surrendered or made agreement with reference to.

I do not think there is very much in the statement made by the Senator from Kentucky, that these Indians are wards of the nation, and that therefore they cannot make bargains. The United States makes contracts every day with the Indian tribes as tribes. We have legislated over and over again with reference to the Indian tribes as affecting railroad corporations, authorizing them to give their consent for the construction of railways within their territory. There are now, I believe, in the Indian Territory five different railways by the consent of the confederated Indian tribes in the Territory, under the authority of the laws of the United States. So there is nothing in these objections; but the only question now is whether the white people who have made contracts with these Indians, supposing they had authority to make these contracts, shall be deprived of their property and the improvements they have made in these towns or villages, or whether the Congress of the United States, so far as it can lawfully, shall give authority and recognition to these contracts. That is all there is in this case.

Mr. MORRILL, of Vermont. May I ask the Senator from Iowa a question? Is it not also true that these Indians, or part of these same Indians, are deprived of any power whatever to collect the amount that is due them in consequence of the decison of the courts?

Mr. ALLISON. At this time?

Mr. MORRILL, of Vermont. Yes.

Mr. ALLISON. It is. As a matter of course no Indian, nor the Seneca tribe of Indians, can enforce any of these contracts in the State of New York, by a decision of the Supreme Court of the United States. Therefore, both parties are remediless unless there is some authority conferred by act of Congress.

Mr. HAMILTON, of Texas. I desire to ask the Senator from Iowa a question. Are the Indians complaining here that they cannot collect their rents? Is that the basis of the idea of the Senator or of the bill?

Mr. ALLISON. I do not know that the Indians are complaining that they cannot collect their rents; but I now there is no power to enforce their rents. There are, I know, some objections made to this bill by certain men belonging to the Seneca tribe. I do not know that there is any formal objection to this bill made by the Seneca tribe of Indians. I have no such knowledge; there may be some.

Mr. BAYARD. Here, I understand, is a protest which has been presented and read at the desk.

Mr. ALLISON. They object to certain provisions of this bill, if the Senator from Delaware will allow me. A portion of the Seneca tribe complain that certain Indians had allotted to them particular tracts of land in former years, and that those particular tracts of land have become valuable by means of a railway traversing their reservation and by means of these villages; and therefore now, inasmuch as these leases are about to expire, they

ask that the benefit of these leases should go to the tribe and not to individual Indians who had these lands allotted to them in former years. But the committee, in examining this question, found from the admission of the Indians themselves that the tribe, which had authority to allot lands in severalty, did allot these lands to individual members of the tribe; and although in some instances they had made considerable sums of money thereby, we thought it was not fair to compel the Indians who had these allotments to surrender these lands to the tribe again.

Mr. BAYARD. At least if they do surrender they surrender in accordance with the laws and customs of their own people. If the allotment was originally made to these parties and the question be whether a usufructuary lease under this organization shall at the end return the improvement to the individual Indian or return it to the tribal organization to which it belongs, that is a matter to be settled entirely by the laws and customs of the organization existing at the time of the lease. There is no doubt about that.

Mr. INGALLS. Will the Senator allow me to read one single sentence on that point from the report of the superintendent and agent of these Indians?

Mr. BAYARD. Certainly. Anything which will throw light on this measure I shall be glad to hear.

Mr. INGALLS. The agent, Mr. D. Sherman, in his report to the Hon. Edward P. Smith, Commissioner of Indian Affairs, speaking of the village of Salamanca, on the Allegany reservation, which is the principal settlement, says:

This village is situate at the junction of the Erie Railway with the Atlantic and Great Western Railroad; is wholly on the reservation, and numbers over twenty thousand inhabitants, who occupy the lands either under leases made by the Seneca Nation [914] of Indians, or

under leases made by individual Indians, approved by the council of the Seneca Nation, and most of them confirmed by laws of the State of New York. Among the leases first named are those given to the railroad companies for right of way and railroad buildings at Salamanca. The courts of New York have adjudged all these leases void. Since the making of these leases, which were suppossed to be valid, $1,000,000 or more have been expended on the leased property in the erection of railroad buildings, dwelling-houses, stores, churches, school-houses, and other buildings. The people of Salamanca are entitled to some relief by the legislation of Congress.

I read this extract for the purpose of showing to the Senator from Delaware that these leases have been made in accordance with the laws and customs of the council of the Seneca Nation, but have been declared to be invalid by the courts of the State of New York; and therefore legislation by Congress is necessary, that body alone having jurisdiction over the relations of Indians with white men.

Mr. THURMAN. Invalid for want of the assent of the United States?

Mr. INGALLS. That is my understanding.

Mr. BAYARD. Mr. President, for one I must express my sense of obligation to the Senator from Kentucky for arresting the passage of this bill and placing the facts and the principles contained in this proposed measure before the Senate and the country. With whom are we dealing by this law? Certainly with those who are at a great disdvantage. We are dealing with the helpless remnant of a race that is fast fading away, and fading away more through the vices of civilization and the injustice of the American people than from any other cause. I do not propose to be a preacher of morality here; but I must say

that, according to my ideas of equity, there is a stain upon the people and the Government of my country, not confined to this generation but in generations that have passed away, in their treatment of the Indian people. I do not propose to be unjust because it is simply inconvenient to be just. I do not propose with a strong hand to wipe out what remains of property and legal rights to these people because loss or inconvenience may happen to the practical progress, as it is termed, of civilization even in so busy and rich a State as New York. Here is this poor remnant of a once powerful and warlike people, comprising now about two thousand souls—men, women, and children. They have a little reservation of land about forty miles long by half a mile or three-quarters wide, which has always been their own, which never did belong by any conveyance or grant either to the Government of the United States or to the State of New York, within whose limit the land lies.

Mr. FENTON. Will the Senator from Delaware allow me to interrupt him?

Mr. BAYARD. I will yield directly. So that when leases were sought to be made by these Indians as individuals or by right of their tribal organization to citizens of New York under the authority of statutes of the State of New York, the Supreme Court of the United States declared such leases to be invalid and such conveyances absolutely void.

I have finished the sentence. I will yield to the Senator now.

Mr. FENTON. I think my friend from Delaware is in error in regard to the number of Indians upon this reservation.

Mr. BAYARD. That is a very trifling matter. Perhaps the fewer they are and the more helpless they are the greater is the duty imposed upon us of strictly protecting them in their rights.

Mr. FENTON. the fact is that there are about eight or nine hundred on one reservation.

Mr. BAYARD. Let it be so. If there are but eight or nine hundred it imposes the more upon us the strict and just duty that their feebleness shall not be the measure of our justice.

This people have a tribal organization. That organization gives to them a certain polity of their own. They have tribunals of justice and equity, according to their own rights. I understand that one of their judges, recognized as a fair and honorable man, has appeared before this committee in defense of his people and in opposition to this measure. Their customs and their laws are not idle forms; they are practical and efficient for their purposes. The question is whether, when they come in collision with the greater power that surrounds them, might shall be right; whether justice shall be sustained as between the strong and the weak.

It is perfectly plain, Mr. President, to all who have even given slight attention to the progress of this Indian question, that the sole avenue by which these people can be expected to pass from savagery and barbarism to comparative civilization will be through agriculture and pastoral pursuits. For manufactures, for science, for abstract study and disquisition, they may have a latent capacity never yet developed; but certainly your first and strongest hope is that they shall be taught the rewards of peace and patient labor in agriculture and in pastoral pursuits. That is what these people have followed; that is what they have proved themselves capable of prosecuting with benefit to themselves and others; and it seems to me that the intent and object of this bill in every feature of its provisions is to take away from them that permanent tenure of land which alone can be the basis of their

possible civilization and advancement. The lands of their reservation are fertile, their farms valuable and well cultivated, and the envious eye of their white neighbor has fallen upon them, and he seeks to deprive them of their possessions by indirection or pretense of public improvement, in modes of which their present owners are not capable, but at their cost. Now, sir, whatever may be the inconvenience of continuing these Indian reservations where they now are, it is not, in my opinion, to be weighed for one instant against the duty which justice imposes of maintaining them there, in what their own will and the laws of the land existing since they were brought in contact with the white people have declared to be their rights.

This bill proposes to give to three commissioners, not members of the tribe, not appointed with the consent of the tribe but against the consent of the tribe, the power to locate villages and township lines, and they are to be entirely arbitrary lines extended for or near from the present nuclei of their habitations, at the discretion of these commissioners, in whose choice the Indian has no voice, over whose action the Indian has no control. When the honorable Senator from Missouri said just now that the intent of this bill was not to destroy the tribal organization, I pointed out to him that this bill permitted for the first time (in violation of the laws of the United States, in violation of the policy of the United States, in violation of all the customs and laws of these Indians) an individual Indian to act independently and perhaps adversely to the will of the tribal organization, and to lease any land in his possession as he sees fit, provided he happens to have possession of it at the time of the passage of this bill. But, said the honorable Senator, such leases are confined to the limits of the villages. Yes, but the limits of the villages are to be

decided by those three commissioners. First, you say this individual Indian shall have the power to lease his lands anywhere within the village bounds within certain township lines, and then you give to others the power to say just where those township lines shall extend; which means that they can extend to any locality or even throughout the entire reservation. Therefore it is perfectly evident that this is a direct, sweeping measure for the destruction of the tribal organization of these Indians.

Mr. President, I am not prepared nor competent to speak of the advantage or otherwise to this remnant of a once proud people of destroying their tribal organization. I only know this that if they are divided, if they are separated, if they are freed from all the influences of tribal organization, the date of their absolute disappearance as a distinct people in the lists of the human family will be covered by a very few years. The one chance they have as a people to live out and fulfill any destiny is that they shall be permitted to maintain their tribal organization. This bill sweeps away that possibility. It takes from them their lands, and, by taking from them their lands, takes from them the only two pursuits by which they can hope to advance upon the plane of civilization. Is it a just measure? Is it a wise measure? Does it behoove the honor, or the mercy, or the magnanimity of the American people thus to deal with a people who have no voice, Senators, to answer for themselves on either floor of Congress? They are not voters. They have not this lever and privilege of suffrage which would enable them to send representatives to this floor; they have none; and therefore it seems to me that in dealing not only with those who are absent, but entirely unrepresented, especial care, especial consideration, should mark the action of a Government like ours toward them.

But, Mr. President, suppose they were represented, grant that they had every opportunity here to be heard, and grant still that their rights, whatever they may be, are subject to the will and pleasure absolutely of the Government of the United States; even the House of Representatives in dealing with this matter sought to exercise some restraint upon those white men who had deliberately, in defiance of the laws of the United States and in defiance of the laws of the State of New York, in defiance of the decisions of the courts of New York and of the Supreme Court of the United States, chosen still to run their risk and make their bargains and settlements among these people, relying only upon the customs and laws of the nation itself and the protection they afforded. They have here provided that not only shall all "unexpired leases of land situated within the limits of said villages when established as before provided. "—by these three commissioners nominated by the President—" in which Indians, or said Seneca Nation, or persons claiming under them, are the lessors, shall be binding upon the parties thereto." But the committee of the Senate have stricken out what seems to me to be so plain, so essential, so reasonable a proviso, that I must express my astonishment. The House bill provided—

That this act shall not be construed to ratify or confirm leases which, according to the laws or customs of said Seneca Nation, are invalid.

This committee—and I believe that was concurred in lately by a vote of the Senate in Comittee of the Whole—have stricken out that limitation; so that leases in direct violation and disregard of the laws or customs of the Seneca Nation, not only in defiance of the laws of the United States and the laws of the State of New York, but in defiance of the laws or customs of the

Seneca Nation, made against the policy and the interests of those people, are to be validated and confirmed. There is by this act a complete, wholesale, sweeping reversal of the policy of the Government of the United States, as expressed through its legislation in regard to this Indian subject.

Mr. President, my lot in life has not brought me into personal contact with the Indian people; and I am well aware that in these States which have until lately been occupied by the Indian tribes, or in which they still linger in what are termed in law reservations, but which in fact are mere localities where they are suffered sometimes to live without molestation, the feeling against them is so strong as to overcome all suggestions of treating an Indian as though he were a [915] fellow-man entitled to the same principles of justice that we ask for each other. I see it too much, sir; I hear it expressed in private conversation; I hear it constantly from the officers of the Army who have been brought in contact with them and finding them with all the vices of savagery, treachery, bloodthirstiness—all of which in my opinion are chiefly due to the bad faith of Government agents toward them. I have heard it almost as an apothegm among officers of the Army that "the only good Indians had bullets through their heads;" and I have heard sometimes from gentlemen from the Western States, the far West, where they are brought into contact with these people and where the Indian possessions block the pathway of their material progress, very much the same sentiments.

Their reservations have been invaded; their lands have been taken from them against their wish, without law and against law, and the effect of this measure, it seems to me, is indirectly, if not directly, to do again this very thing. Sir, after what we have heard from the Senator

from Kentucky, with what we have heard read from the desk in the protest of the president, the councilors and the people of the Seneca tribe of Indians, made in their national councils, against this bill, I cannot give my vote in favor of any such measure; and I trust that before the debate closes some motion will be made (and by none could it be made more fitly than by my friend from Kentucky) to have this bill recommitted until we can have some expression of the free voice of this Indian tribe in regard to a measure that it seems to me may scatter their organization to the four winds of heaven and deprive them even of a nominal existence as a tribe of Indians.

Mr. McCREERY. I submit the following motion:

That the bill be recommitted to the Comittee on Indian Affairs with instructions that no further proceedings be taken in relation to the subject-matter of the bill until the Secretary of the Interior shall have caused a fair and full expression of opinion of the Seneca tribe of Indians to be obtained and reported by him to the Senate.

Mr. THURMAN. Mr. President, there are two sides to almost every question, and there are two sides to this. There are fifteen hundred or two thousand people in the village of Salamanca; a very nice, beautiful, thriving village on the Indian reservation called the Allegany reservation. There is property there to the value of millions. That property, or the value of that property, has been created with the assent of the Indians, by the labor and the capital of white men; and I do not suppose that any one here will ever be ready to allow the fifteen hundred white settlers of Salamanca to be turned out of their homes. That would hardly be a measure to be taken in the name of humanity. Nor do I suppose that the Congress of the United Statse will see one of the greatest throughfares through this country, the Erie and the Atlantic and Great Western Railway, torn up. That

is not a thing that can be tolerated. That something is to be done, everybody must admit. The only question is what shall it be; and the only difficulty in settling that question is to learn precisely what are the facts.

On the Allegany reservation there are eight hundred persons who are called here Indians. Well, sir, I have been on that reservation frequently, and I say to my friends who have great sympathies for the poor Indian that their sympathy is bestowed a great deal more on white people than on red people, and of these eight hundred it would trouble any one to find a pure Indian, or one who has not more white blood than red blood in his veins; but these people have rights, and their rights are to be respected, and they are not to be oppressed. But let us see what their rights are and what the rights of the United States are.

The United States have maintained the doctrine from the first—originally for selfish purposes perhaps, afterward for humanitarian as well as selfish purposes—that the Indian tribes should not be permitted to alienate their lands without the consent of the United States. With the consent of the United States they may alienate. If, for instance, Congress had forty years ago passed a law that the Seneca tribe of Indians might alienate their lands, every one of these leases, if properly executed according to the laws of that nation, would be a proper lease to-day. The only thing that has stood in the way is that we have not given our consent to that alienation; and now the only question is whether, under the circumstances of the case, we ought not to give our consent so as to act retrospectively, and whether we ought to give consent for the future. It is not a question about our general policy with the Indians. So far as the Indians on these reservations are concerned—take the Allegany reservation, for instance—so far as the eight

hundred Indians on that reservation are concerned, they are fifty times richer to-day than they were before a railroad was made on their reservation. They have more employment, more wealth, more civilization, are better clad, have better food ten times over than they had before the railroads were made.

Well, sir, is the fact that they have a tribal organization any reason why the improvement of that country shall utterly stop, why highways through it shall be broken up, why towns shall not grow there at all, why it shall be what it once was, a mere fishing and hunting ground? No one will say that. But at the same time we are bound in some way to protect the white men who have gone on that reservation with the assent of the Indians, and under the authority of the State of New York, and made leases which were considered to be valid by everybody who made them. Although we are bound in some way to see that monstrous injustice is not done by confiscating their property, it is a grave question how far we shall go in permitting leases to be granted hereafter, under what limitations they ought to be permitted, and how far we shall extend the jurisdiction of our own courts and the courts of the State of New York over that reservation. Those are very grave questions indeed.

I for one would like very well to see every one of these so-called Indians become citizens of the United States, and let their tribal organization cease. It would be the best thing for the country and for them; by far the best thing for them, in my judgment; but so long as they do retain their tribal organization, and we are to exercise a guardianship over them, it seems to me we must take more care than is taken in this bill how we allow them to alienate their possessions.

If this bill become a law, any Indian having a possession there may alienate it by lease for ninety-nine

years, renewable forever; in other words, grant an inalienable fee, and it requires no great capacity to see that in a very short time a majority of them would have alienated their property.

Mr. BOGY. The individual authority the Senator speaks of is confined to town lots in the villages.

Mr. THURMAN. Yes; but there are about thirty thousand acres of land in that Indian reservation. These villages are all in the thirty thousand acres of land. Thirty thousand acres of land are about seven miles by six miles square, or would be if put in the form of a parallelogram.

Mr. INGALLS. The reservation is forty miles long and one mile wide.

Mr. THURMAN. Very well; the six villages might take up the greater part of that under this commission, and if they did not it would be the entering-wedge for the rest of it to be put in precisely the same category; and therefore it is very easy to see that unless you put some restriction upon this alienation, unless you put some safeguard upon it, those eight hundred persons—though not all of them, for some of them are very intelligent and worthy men and quite as intelligent as white men—would alienate all their rights there, and then it would give rise to a good deal of trouble, because it is contended on the part of the president and councilors of the tribe that no Indian has any individual rights which he can alienate; that he is simply allowed possessory rights at the will of the council of the tribe. But if we treat them as possessory rights which will enable them to alienate them, and alienate them for a long time, and bring them into out own courts to decide, infinite trouble and litigation may grow out of it.

We want on this subject more information than we have. I was in hopes that we should find a report

accompanying this bill which would show the precise state of the case. As the bill is, with this unlimited power to alienate by the future confirming of leases, although made even contrary to the laws and customs of the tribe, I cannot vote for it; but if a proper bill were made confirming the right of way to these railways, granted to them by the Indians for a good consideration, confirming the leases made pursuant to the laws and customs of the tribe, or with the tacit assent of the tribe to the white men who have expended their money there, I would consent to it—that is, so far as I could give the consent of the United States to act retrospectively, I would do so—and let it have the same effect in the future which I have indicated. While I will do justice to the Indian, I will not do injustice to the white man.

My friend from New York [Mr. FENTON] suggests to me to offer an amendment limiting these leases. This is such a subject that I could not at my desk prepare hastily such an amendment as I think should pass. I think those who are promoting the bill will do best to let it be recommitted, and the committee, having heard the objections that have been made to it, can remodel it and bring it in in such wise as perhaps to meet the approbation of the entire Senate.

Mr. MORRILL, of Maine. To obviate the difficulty that the honorable Senator from Ohio seems to have, I would move, if it be in order now, on page 3, line 5, section 5, after the word "within," to insert "the present limits of;" so as to read "within the present limits of said villages."

The PRESIDING OFFICER. The Chair would remind the Senator that the pending motion is to recommit.

Mr. THURMAN. I do not know whether these villages—the Senator from New York can probably

tell—have any definite boundaries now or not. I know Salamanca is a very nice, thriving village; I have been there frequently; but I do not know whether it has any definite village boundaries.

Mr. FENTON. There are definite bounds to the villages; they are very compact. The authority is given to the commissioners to fix boundaries.

Mr. MORRILL, of Maine. They are necessarily limited by the improvements and occupation.

Mr. FENTON. I suppose they do not occupy in all over a thousand acres.

Mr. MORRILL, of Maine. I hold myself to be as jealous of the rights of Indians, here and elsewhere in the country, as anybody in the country, and I am as solicitous on all occasions to protect their interests. My attention has been called to the provisions of this bill, and I was in committee when it was considered and gave my assent to its being reported to the Senate upon the conviction that it was a proper thing to do; that it did not, in any just sense, impair the inter-[916] ests or rights of the Indians here, and was not of bad example in any way. I understand that the facts all lie in a very narrow compass.

These Indians occupy a territory of forty miles long and about one mile broad—thirty-five or forty thousand acres of land. From time to time they have leased, perhaps, in all, about one-fortieth of the entire possession. That is an important fact which should be taken into consideration in acting upon this subject. One-fortieth have they leased. Now, for what purpose? If for purposes which are inimical to the best interests of the Indians, we should not sanction those leases; but the committee are satisfied that it was not so. In those villages have sprung up industries, mechanical arts, manufactures, and the like; and another thing, three railroads have passed through. All of these are beneficial,

all are agencies in the right direction, agencies of civilization; and they occupy so inconsiderable a portion of the lands, the broad acres of these people, as not to infringe at all upon the pursuits which these Indians are following. Regarding it in that way, the committee came to the conclusion that as the Indians themselves had thought this was for their best interests, as they were solicitous of inviting these civilizing interests into their midst, if they did not complain—I mean the body of the Indians—it would not seem to us that there was any injustice likely to be done.

These are the general facts. What took place? Under the rules and regulations of the Indians lands could only be leased absolutely and unqualifiedly by the council or nation. Many of these leases are by the council or nation. Others, however, are by individuals; but in every instance they are by individuals who had a separate allotment. So the leases stand in this way, either by the council or nation, and in the majority of cases they are directly from the council or from individuals who had had allotments of land made to them and which they were occupying in their own right. Now, what does this bill propose to do? This bill proposes simply to step in and say that these leases are valid and may be maintained in the courts. That is all there is of the bill. Can anybody see any injustice to the Indians? Is there any malign policy in this bill? Does anybody suppose that any contagion is to go out from these villages if they are kept within their limits, to the advancement and progress of these Indians? The villages, keep in mind, only occupy about one-fortieth of the entire possessions; and so far as this bill is concerned they cannot go beyond.

Where is the morality of this bill, if there is any in it? It is of course that unless a contract has been made absolutely injurious to the Indians it should be kept. The

committee are satisfied that it is not prejudicial to their interest, nor is it subversive of the civilization which we hope for them in the future. These are the simple facts in the case as I understand them and these are all the principles that are involved.

My honorable friend from Delaware has said something about the injustice of this. I sympathize very much with him in his regard for the Indian. A great deal of injustice has been done in American history in regard to this race undoubtedly, and we have but little sympathy and too little care in regard to Indian affairs. They are literally our "poor relations," and we care very little for them. We follow them from one extremity to another, indifferent as to their fate. None of that, however, is in this bill. It is just in the narrow compass which I have stated. Contracts of lease have been made leasing a fractional portion of a Territory ample in all respects to all the avocations of these Indians, beneficial, as the committee believe, to their interest; and the only question now is whether the Congress of the United States will sanction the leases, which sanction the courts of New York have said it requires in order to make them valid contracts. In good faith, in good conscience, and in harmony with the interest of the Indians, the committee believe that Congress ought to pass this bill. There was only one interest that by any contingency, it was apprehended, could be affected by this bill, and that was the resulting interest of a company of gentlemen who have succeeded to the right of pre-emption; that is, the right which will inure to somebody when the possessory right of the Indians is done away; but that is altogether in the remote future, and I believe those gentlemen have ceased to believe that their interests will be affected by it, as by no possibility could they be.

I think that is about all there is of this case, and I do not believe there ought to be the slightest apprehension in the Senate as to passing the bill as it comes from the committee.

Mr. HAMILTON, of Texas. I move to amend the motion made by the Senator from Kentucky by sending the bill to the Committee on the Judiciary. The Committee on Indian Affairs has reported on the equities of the case, no doubt, but I should like to hear the law of the case myself.

Mr. WADLEIGH. Mr. President, about twenty years ago I obtained some landed interest in Western New York, close by this Allegany reservation, belonging to the Seneca Nation, and for some ten years after that I had occasion to know something about the village of Salamanca and about the Seneca tribe of Indians in the State of New York. I remember that eighteen years ago I walked from about Salamanca down to Little Valley, across what is now the village of Salamanca, but it was then a barren wast, upon all of which there was only one single house, and that one poverty-stricken. Soon after that railroads were built there. At the intersection of these railroads it became desirable to locate settlements of white people. Those men went to the Legislature of New York and procured what they believed and what the Indians believed to be binding enactments. Under those enactments leases were made, under which leases there has been built in that place where eighteen years ago there was but a single house a village that is supposed to contain some three or four thousand inhabitants. There are living there, in houses built by themselves from the product of their lives of labor, mechanics, farmers, carrying in industrial interests and benefiting these very Indians who are now seeking to obtain the advantage of them.

Mr. President, it was found some time ago, through a decision of the courts, that the acts of the State of New York were invalid and that the leases made under them were invalid. Now, some of these Indians come here and resist the passage of a law of the United States, without which the leases are invalid, which will simply validate those leases, fair leases, fair contracts which they made for their own benefit. They seek to annul the title which they voluntarily gave to the white people who went there and settled and who have built up thriving villages on that reservation. That, Mr. President, is unjust, and I claim that we should do justice here to men of our own race without, as I think, committing injustice upon another race.

Why, what will be the result if we do not pass this law giving the consent of the United States to these fair contracts? It is this: Suppose that there is there from New England or from New York or from anywhere in the United States a man who has invested the products of a life-long industry with a house and a little land, the only title to which he holds under one of these very leases; he dies to-day; it is necessary for the interests of his widow and his children to sell that property, so that they can live upon its proceeds; and it will not bring one dollar, because there was no legal title to it in him and there will be none in his estate. You beggar these laboring men if you do not pass this bill.

I hope that the Senate of the United States will not be governed by sickly sentimentality and be deterred by it from doing justice to the laboring men who have built up these thriving villages where there was but a few years ago a barren wast. These Indians, as I know myself, do not need the sympathy of anybody in this Chamber. As I believe, there is not in the State of New York a community, according to its numbers, more opulent than that of the Seneca tribe. I know that years ago they had

houses, they had lands, they had flocks, they had herds, they had property to a greater extent than any of the communities about them; and it is not necessary either to talk about another raid. There are but very few if any pure-blooded Indians among them. They have been mixed with the whites. Originally the Romans of the Indian races, as we know the Six Nations were, by their intermixture of white blood they have become capable of coping with any nation so far as bargaining and so far as trade is concerned. There is no need of any sympathy on their account. In view of the fact that they made voluntarily these contracts, which have been for their benefit as well as the benefit of the white people who have gone there, and in view of the fact that unless the consent of the United States is given to validate these contracts you will beggar these communities who have built up these villages, I am in favor of the passage of this bill.

Mr. PRATT. Before the vote is taken on the pending motion to recommit this bill with instructions, I wish to call the attention of the Senate to the amendment which I have offered, which it seems to me removes all objection. That amendment is that all leases which have heretofore been made or shall hereafter be made by this tribe of Indians shall for their validity be subject to the approval of the Secretary of the Interior, who for this purpose is constituted their guardian. If that amendment is ingrafted upon the bill, it seems to me there can be no danger in passing this measure. I am satisfied that it is a measure of justice.

What are those two reservations? Who are the parties? How did it come about? As I understand it, the right of these Indians in the reservations in question depends upon treaties made with the United States, they being the one party and the United States the other. The right of these Indians is that of simple occupancy during their

existence as a tribe, the fee remaining in the United States. Now, then, it would be a very unwise policy indeed to tie this tribe up, deny them all power to sell or make leases of these lands or any portion of them during their existence as a tribe. It seems that without authority they have made leases to corporations and to individuals, and it is because of the legal invalidity of these leases as adjudicated by the Supreme Court of the United States that this measure is now brought before Congress.

The policy of this Government has been not to allow the tribes inhabiting reservations to make sales to any other party except the United States themselves. This heretofore has been accomplished by treaty, in which their right of occupancy has been extinguished and the reservation then becomes a part of the public domain. But, certainly, there being only two parties to the contract which has resulted in the reservation, if the Indians of the one party see proper to lease or to sell, then, undoubtedly, the consent of the United States validates the title which has been made. I have not heard any impeachment of the justice of the leases which have been made; but still, for greater caution, I have thought it proper to offer the amendment referring the whole question to the Secretary of the Interior to ascertain whether the leases were just, and if so to approve them.

It is obvious that Congress is in no condition to inquire into the particulars of every lease that has been executed by this (illegible) to cor- [917] porations and to individuals. That matter must of necessity be referred to some tribunal, and I know of no more appropriate one than the Department of the Interior. If these leases shall pass muster with him, I do not see any occasion whatever to refer this matter back to the Committee on Indian Affairs, or refer it, as proposed, to the Committee

on the Judiciary. Therefore I hope that the resolution to recommit the bill will be voted down, and that my amendment will be adopted; and in my judgment it will make this measure entirely proper.

Mr. INGALLS. I hope we may have a vote on the pending proposition at the present time.

The PRESIDING OFFICER. The Senator from Kentucky has moved to recommit the bill to the Committee on Indian Affairs, with instructions. The Senator from Texas moves to amend the motion by referring it to the Committee on the Judiciary. The question is on the amendment of the Senator from Texas.

Mr. BOGY. I hope the bill will not be committed to the Committee on the Judiciary, and that it will not be recommitted to the Committee on Indian Affairs. I am perfectly satisfied that the rights of the Indians are well guarded and well protected in the bill, and that there is not a word in it which can affect the tribal organization of this tribe of Indians. The bill, I think, is well guarded and well protected; and while I am up I would also object to the amendment offered by the Senator from Indiana. I do not think the Secretary of the Interior is the proper person to judge of the propriety of any of these leases. I think the council is much more competent; and the whole object of this bill is to legalize the acts of the council heretofore and to authorize them hereafter to lease this property; but in the villages, where persons have been in occupation for many years without a lease from the council, an occupation which had its origin in the usages and customs of those people, it is proposed that those persons being thus in possession shall have the right to lease those lands. That is all the bill intends to do, all that it purports to do. There is not a word in the bill that can justly be construed as militating against the rights of the Indians or the power of the council of

the Indians. Their usages, their customs, and their laws are all maintained and respected. The great object is simply to induce these men to yield to the wants of the present day, in permitting railroads to traverse these reservations, in allowing towns to be laid out for depots and other improvements that necessarily follow the building of railroads; and as far as the Indians are concerned, it is conferring on them a great benefit.

I see no reason why the bill should be recommitted. It strikes me as being entirely proper in its provisions. Even in the event of a controversy as to the amount of rent hereafter, it is guarded. If the parties do not agree as to what should be the rent of any of the lots hereafter or now occupied, not by a written law, but in accordance with the customs of the Indians, that is referred to the council of the Indians, and the council appoints a referee and the lessee appoints one, and the two decide, or if they cannot agree they appoint a third party. Everything appears to be well guarded and well considered.

Now, in answer to the argument advanced by the Senator from Ohio, that this bill should be recommitted so as to limit the power of leasing, I would also object to that. There should be no limit at all. The right should be given to the Indians without limit to lease these lands for any term of years which they may think proper. Great towns will spring up on these two large reservations. They necessarily will grow. Large improvements will be made, costing immense sums of money; and there should be no limit to the power to lease. In fixing no such limit, you take away from them no power, you respect their rights, you preserve their rights, you establish them in the right to make these leases. The Indians cannot pass a fee. Why? Because they do not own the fee. The fee in this case is not in the United States, as was stated by the Senator from

Indiana; the fee of these two reservations is vested in a company composed of individuals who at first objected to this bill before the Committee on Indian Affairs—raised an objection to it and fought it for a long time; but when the bill was understood by them they yielded their opposition.

I say once more that all the arguments, as well as all the sympathies, which are applicable to the Indians of the plains, to the Indians of the wilderness, to the Indians of the great West, are not at all applicable to Indians on reservations within the old settled States. On the contrary, the very reverse is true. I say once more it would be a great blessing to these Indians if their reservation was in an equitable way annihilated as soon as possible, respecting their rights, preserving their individual rights in a spirit of equity, but the sooner that their tribal organization disappears and that from being mere Indians they be elevated to the high position of American citizens, so much the better for them.

One of the Senators spoke of the large farms on these reservations. There are no large farms on these reservations. On one of the reservations, that which is forty miles in length, there are not over a thousand acres in cultivation perhaps, and that cultivation is very imperfect. Why? These men are neither Indians with the manly virtues of the Indians of the prairies and the plains, nor are they American citizens. They are dwarfed down to nothing, and have no ambition, no energy, no right to vote, no privileges. They are not citizens and they are not Indians. They are an isolated little tribe surrounded with civilization, and yet debarred by law from participating in the white man's civilized Government. It is sympathy misapplied and to the detriment of these very people. The idea of sustaining a people or a nation in our midst, so that they may hereafter fulfill their destiny, is an impossibility, and it

should not be tolerated. Let them identify themselves with the destiny of the American people and participate and partake with us in that great destiny, and the sooner they do it the better for them. Sir, there is no hope for the American Indian unless he becomes an American citizen, marching along with the American people not as an Indian but as an American citizen. We are attempting in our legislation to enable the African race to march with us hand in hand in fulfilling this destiny, not as a negro race but as American citizens; and why should we make a distinction of the Indian?

Sir, I repeat that this bill is well protected, is well guarded, taking from the Indian no right, conferring on the council all power that is necessary, protecting their rights, only enabling them through their tribal organization, speaking through their council, to yield to the requirements of the day and the age; nothing more.

Mr. HAGER. Mr. President, I am not very familiar with the history of the Seneca Nation, or with the treaties between the United States and that tribe, or with the reservations that are alluded to in this bill; but during this debate I have examined the bill before the Senate, and I have very serious doubts whether it be, as the Senator from Missouri has just stated, sufficiently guarded. The measure before the Senate is not in the interests of the Indians, nor do they appear here to ask this legislation; on the contrary, they appear here protesting against it.

Mr. BOGY. Will the Senator allow me one word?

Mr. HAGER. I will yield the floor in a few minutes, as I have but little to say.

The PRESIDING OFFICER. The Senator from California declines to yield.

Mr. HAGER. The Senator is so far distant from me that I can scarcely hear him; but I will listen to the Senator if he has any question to ask.

Mr. BOGY. I think the Senator from California is mistaken. As a question of fact, this tribe of Indians are not protesting against any such thing. The council has never protested. Individual Indians have, but a great majority of these Indians are in favor of this bill. That is the information before the committee.

Mr. HAGER. I merely undertook to state what was asserted by the Senator from Texas, if I understood him correctly. I have not examined the case, and do not speak from personal knowledge. It has been stated that the Indians had sent a memorial to the Senate protesting against this bill.

Mr. BOGY. I will state to the Senator from California that that is a mistake.

The PRESIDING OFFICER. Senators will observe Rule 3, and address the Chair. The order of business cannot be observed unless the rule be adhered to.

Mr. HAGER. I was merely stating in reply that I understood the Senator from Texas to say that the Seneca Nation were here protesting against this legislation. I do not undertake to state it of my own knowledge.

Mr. BOGY. Will the Senator allow me?

The PRESIDING OFFICER. Does the Senator from California yield to the Senator from Missouri?

Mr. HAGER. Yes, sir.

Mr. BOGY. I think the Senator from Texas made that statement, and I have no doubt the Senator from Texas believed the statement to be true. But according to the information that has come to me it is a protest of individual Indians, and the council has not protested. This I know I can say, that although this bill has been before the committee for a long time and has met with much opposition, the council as a council never has protested against its passage before that committee. Individuals have, I admit, but not the council as an

organized body. I know the Senator from Texas made the statement, and I will repeat again, for fear he might misunderstand me, that I am perfectly satisfied he made it believing it to be correct. If I am wrong, I am ready to be corrected.

Mr. HAMILTON, of Texas. Mr. President—

The PRESIDING OFFICER. Does the Senator from California yield to the Senator from Texas?

Mr. HAGER. Yes, sir.

Mr. HAMILTON, of Texas. Will the Clerk return to me the protest that I sent to the desk to be read this morning. I stated that the delegate who is here representing the tribe has stated to me—Andrew John—that this is the protest of the whole nation, as he understands it.

Mr. BOGY. We had this Andrew John before us; but there is no evidence that he ever presented an official protest from the tribe. He is represented to be a man of wealth, and somewhat of a speculator himself.

Mr. HAGER. I would ask that the Secretary read what I send to the desk.

The Chief Clerk read as follows:

To the Senate of the United States:

We, the president, councilors, and people of the Seneca Nation of Indians, do most respectfully and earnestly protest against the passage of House bill No. 3080, "An act to authorize the Seneca Nation of New York Indians to lease lands [918] within the Cattaraugus and Allegany reservations, and to confirm existing leases," now pending before your honorable body. And we appeal to the treaties existing between the United States of America and the Senecas, and insist that under their terms we should be protected against any legislation which deprives us of any part of the lands so guaranteed

to us. And we would further state, as to the existing leases referred to in said House bill No. 3080, they never had any validity, and it was so understood by all parties to them when they were executed. All leases of Indian lands were prohibited by the laws of the State of New York, (see laws 1813, 1821, and 1845;) and these leases were made void in law and equity by the United States laws for 1834, sections 11 and 12; and more, such leases were prohibited by the laws, customs, and usages of the Seneca tribe and nation; and it was so distinctly understood, by the parties who applied to the councilors of the nation to ratify them, that the councilors had no such power or authority. Yet this bill proposes to make valid not only those acts forbidden by the statutes of the United States, but also forbidden by the laws of the State of New York, and in violation of the rights, customs, laws, and usages of the Seneca Nation, who own the land so affected, and by so doing force upon this nation these void, forbidden, and worthless leases and compel them to carry them into effect, and to that extent deprive said nation of their lands, in violation of treaty stipulations.

And your petitioners would further state, as to the powers conferred in said House bill No. 3080, in relation to leases hereafter to be made, that the Seneca Nation holds all of said lands in tribal or national capacity: that their lands have not been allotted or divided; all the right any individual Indian has therein is confined to possession; that to confer the right of leasing upon individuals would work injustice among our people; that such an act would compel Indians to go into the courts of the United States or of the State of New York to obtain possession of their lands if a white man disputed it, as those tribunals would have sole jurisdiction to try all questions of right to your petitioners' land, and thus

our courts would be legislated out of jurisdiction to try actions concerning the possession of their own lands.

Given in national council at the court-house on the Cattaraugus reservation, June 3, 1874.

WILLIAM NEPHEW,
President.

Names of the councilors, Seneca Nation of Indians: George Dennis, William Krouse, Isaac Halftoun, Wallace Halftown, Peter Snow, Casler Redeye, Peter Sundown, William Redeye, John Jack, Henry Huffpur, Andrew John, jr., Adam Pierce, Hiram Dennis, Joseph Jemerson, Samuel Jemerson.

CEPHAS TWO GUNS.
Clerk for the Seneca Nation of Indians.

Mr. BOGY. That was an individual protest of these Indians.

The PRESIDING OFFICER. The Senator from California has the floor.

Mr. HAGER. That is the document to which I alluded. I believe it bears upon its face language sufficient to justify the phrase "protest on behalf of the Indian nation." Therefore, I repeat again, that the Seneca Nation have not appealed to Congress for legislation in behalf of the interests which they are supposed to be possessed of and which this bill affects.

In looking at this measure I find that in the second section it provides substantially for the ratification and confirmation of certain railroad leases which have been made by the Seneca Nation. I find in the fourth section—

That all unexpired leases of land situated within the limits of said villages, when established as provided in another section, shall be binding upon the parties thereto.

The committee propose an amendment; that the following proviso be stricken out, namely:

Provided, nevertheless, That this act shall not be construed to ratify or confirm leases which according to the laws and customs of said Seneca Nation are invalid.

The only saving clause in this bill has been stricken out by the report of the committee, and I believe that amendment, as proposed, was adopted this morning in the Senate. The bill, as it came to us from the House, had this provision, excepting from it those leases which were invalid according to the laws and customs of the Seneca Nation. In striking out this paragraph, every lease that may have been made will come in under the operations of this bill, whether made in a legal way or made in an illegal way. I do not know to what extent that nation has been in the habit of legislating, or to what extent they can legislate by law; but it certainly seems from the clauses in this bill that they have been in the habit of taking some action in some way by exercising control over their own interests.

The scope of the bill in other respects is that the President of the United States shall appoint three commissioners, whose duty it shall be to survey, locate, and establish boundaries to certain villages that are named.

Including therein, as far as practicable, all lands now occupied by white settlers and such other lands as in their opinion may be reasonably required for the purposes of such villages.

There is a power that is unlimited. They may take in any lands that may be occupied by white settlers, or any which in their opinion may be reasonably required for the purposes of such villages. Then further on in section 4 the Indians who may be entitled to the possession of any of that land may lease it, and the nation may lease such as the Indians are not individually entitled to possession of. There is a power, in other words, to dispose of the whole lands of the Seneca Nation by an interpretation that may be put upon this bill. It may be all right; but I do not think it is calculated to protect the interests of the Indians.

Then subsequently the laws of the State of New York are extended over them, and they are subject to appear in the courts of that State and litigate matters in regard to rents and in regard to their possessions and lands; that is, you impose upon them these burdens, that they must necessarily go into the courts of justice with their lawyers, with their witnesses, and be subjected to all the expense that may be necessary to protect their rights if this bill shall go into operation. In my opinion it will amount to a confiscation or rather a sequestration of the entire lands of that nation.

It may be true, as was said by the Senator from New Hampshire, that they are so advanced in civilization that they are able to cope with men of our own race. I would prefer to follow the suggestion made by the Senator from Ohio, that they be admitted as citizens. If they are partly white, if they are intelligent, as it has been said, why not? Are they not equal in capacity to many that we have already admitted as citizens? Being only a small tribe, advanced in civilzation and conforming to the habits of our race, why not at once admit them to citizenship and then leave them to the laws of New York for protection as citizens of the United States?

It seems to me that it would be better to send this bill, as has been proposed, to the Judiciary Committee, in order that we may have the advice of that committee upon the legal effect of it, and at the same time so far as it has any relation to the situation of this nation with the Government itself under existing treaties.

Mr. STOCKTON. Mr. President, I have listened in common with the rest of the Senate with much pleasure and satisfaction to the eloquent debate that has sprung up on this bill, and have been trying to get some information on the subject which might guide my vote. But I confess that I am astonished that no one seems to me to have answered this question: Why should the Congress of the United States by law interfere with such relations and such titles as exist between the Government of the United States and the Seneca tribe of Indians by treaty? Why should they validate invalid leases or invalid conveyances, decided to be so by the Supreme Court, as I understand? Why interfere by law with the Indians, whose title comes to them by the Government by treaty, more than interfere with any conveyance between any other individuals, white persons or persons of the same race in this country? I have heard no reason given for it. I have not heard a suggestion where that power comes from. It if be necessary for the benefit of these railroad companies, if it be necessary for the march of improvement that this small remnant shall be wiped out, you have precedent enough to do it by the strong hand of power; but let it be done so, and so done we do not set a precedent which this bill will set; and that is, when invalid things are done, invalid under the laws of New York, invalid under the tribal rules of the Seneca tribe, invalid by the laws of the United States, and in defiance of your own treaty, that we shall pass an act of Congress to validate them. That is the proposition, as I understand it.

Mr. President, I should not have risen at this stage of the debate to have said even so much—it seemed to me it was too plain to be necessary for me to say it to the Senate—but for the proposition of the Senator from Indiana to refer this question to the Secretary of the Interior. He is to validate or invalidate the treaties of the United States and the titles of the Indians arising under them. The Committee on Indian Affairs in this body, in my humble judgment, would be insulted by such a proposition. I am no member of that committee, but I do not propose, whether a member or not a member of the committee, to see their duties and their business and their prerogative referred to the Secretary of the Interior if I can prevent it. The Congress of the United States cannot say "we cannot pass this bill, we will not pass this bill," but we will say that "the Secretary of the Interior may pass this bill if he chooses," for that is the proposition. Our laws require the sanction of the President of the United States, but not of the Secretary of the Interior. I think the worst of all propositions that have been presented in this debate is a reference of this question to the Secretary of the Interior. I am satisfied that this question can be met, and properly met, by proper legislation. I am perfectly willing to adopt the suggestions made by the distinguished Senator from Missouri and my friend from Ohio, that there may be good reasons why something should be done in this matter. I have no doubt something can be done that is legal, and something can be done that is proper, and something can be done that will be satisfactory; but when a protest comes from the Indians concerned, I care not whether it comes from the representatives here on the spot of this tribe or whether it comes in proper form or not—we know not their forms—when they come and say, "the title you have guaranteed to us you are now

preparing to destroy yourselves;" when they say, "this title which your courts have guaranteed to us you are trying to destroy yourselves"—weak, helpless, poor, as my friend from Delaware has represented them, we have a right to stop and ask this committee to have this bill recommitted to them, and examine that question for themselves, and see if the march of improvement cannot be allowed to have its way without setting such a precedent as this would be in the history of our legislation.

It is an attempt to set a precedent which will break down all the titles in this country. Their title is as sacred as your title. I care not what it is, I enter with no man into a debate, with the information I have now, as to whether their title is a mere use or whether the title is in the tribe or in the individual Indians. They assert it to be in the tribe. Have they not a right to have that question investigated before we act on this bill? But no matter where it is, it is a treaty title; it is a title they got from us, and a title that we have no right against the judgment of our own Supreme Court to send to the Secretary of the Interior to determine.

The PRESIDING OFFICER. The question is on the amendment of the motion to recommit, to insert "Committee on the Judiciary" in place of "Committee on Indian Affairs."

The amendment was rejected.

The PRESIDING OFFICER. The question recurs on the motion to recommit to the Committee on Indian Affairs with instructions.

The motion was not agreed to.

[919] The PRESIDING OFFICER. The question recurs on the amendment of the Senator from Indiana [MR. PRATT] to insert at the end of the second section:

Provided however, That all leases now made or hereafter to be made pursuant to this act shall be subject for their validity to the approval of the Secretary of the Interior.

The amendment was rejected.

Mr. HAGER. I move to reconsider the vote by which the Senate adopted the recommendation of the committee, in section 4 striking out the words commencing in line 5, section 4—

Providing nevertheless, That this act shall not be construed to ratify or confirm leases,&c.

The PRESIDING OFFICER. That may be reached by non-concurring when the bill is reported to the Senate.

Mr. HAGER. Very well.

The bill was reported to the Senate as amended.

The PRESIDING OFFICER. The question will be taken on the amendments severally. The first amendment will be read.

The CHIEF CLERK. The first Amendment is in section 4 to strike out, commencing in line 5, the proviso:

Provided, nevertheless, That this act shall not be construed to ratify or confirm leases which according to the laws or customs of said Seneca Nation are invalid.

Mr. HAGER. I will merely say that I voted for the amendment before inasmuch as it was the recommendation of the committee, without understanding it; but on examination of the bill I think the clause should be retained, and I hope the Senate will not agree to the amendment.

Mr. BAYARD. I understand the effect of the motion now made by the Senator from California will be to leave the section as the House committee left it and as it came to the Senate.

Mr. HAGER. That is what I propose.

The PRESIDING OFFICER. The question is on concurring in the amendment.

Mr. WADLEIGH. Let me say a single word in regard to the amendment of the Senator from California. When the men who have built up the village of Salamanca come here and ask for bread, the Senator from California proposes to give them a stone. The title of the men who built their village under the contracts with these Indians, which both parties believed to be valid and binding, by which both supposed themselves to be bound, are to be made subject by the amendment of the Senator from California to the customs of the Seneca Nation. What kind of a title is that? What man who lives there can know that he has any title at all if his title is subject to the customs of a band of Indians, customs unknown to their neighbors, customs only to be proved by themselves, customs indefinite, uncertain, and which nobody can ascertain about until they are disclosed in a court of justice by the testimony of those persons who alone can know them, and who belong to this Indian tribe?

Mr. BAYARD. Did not the parties themselves take these lands and make these improvements subject to these very customs? Did not they enter into the very contract under which these people went into possession? And ought they object now to recognizing customs which they thoroughly understood were part of their agreement when made?

Mr. FENTON. One word. The leases made with some of the individual Indians were not taken before the council for confirmation. Hence the importance of striking out this proviso, because according to the laws and customs of the Seneca Nation in some cases the leases entered into with the white people by individual Indians are invalid.

Mr. WADLEIGH. The Senator from New York has answered the question of the Senator from Delaware, and I will simply say in closing that it seems to me perfectly absurd that the people who have built the town of Salamanca should come here asking the United States to consent to the title which they have gained by these contracts, by these leases, to give them a title subject simply to the customs of the Seneca Nation, which they can know nothing about and which are only to be proved by the Indians themselves, who can thus invalidate all the leases which they have made.

Mr. BAYARD. I merely want to say that a friend near me has suggested that the position of the honorable Senator amounts to this: It is suffering one Indian to cheat the tribe, and then allowing him to take advantage by this law of his own wrong!

Mr. WADLEIGH. No, sir; these Indians have made certain leases, and both parties to those leases supposed them to be good, and both parties have gone on under them and have profited by them. Now, when it is proposed to confirm those leases, the Senator from California proposes to confirm them how? As they were made? As the parties agreed? As they supposed under the laws of New York they had a right to agree? No, not that, but according to certain customs of the Seneca Nation which do not probably appear in the leases themselves, and so the leases may be invalidated by evidence from the Seneca Indians as to what the customs of the Seneca Indians have been before.

Mr. BOGY. One word. The object we had in striking out this portion of the bill was not to make a vague, uncertian, undefined custom invalidate a written lease. The object of the bill is only to ratify a lease. A lease means a written instrument; and if there be any such thing as a custom or a usage among these Indians, which

is a thing very hard to ascertain, that custom or usage should not invalidate a lease which they themselves had made by their council. The only object is to ratify that lease.

Mr. BAYARD. Contrary to their laws or customs?

Mr. BOGY. The laws of Indians are not written laws. They are mere customs. There is an actual positive lease made to A B, and on the faith of which he has built a good house and made large improvements—a lease made by the council, for at that time nobody else could make one. There may possibly be a custom, there may be a law among those Indians which is not a written law, that might impair and affect this lease. The object is merely to ratify the lease and do away with the custom, no matter what it may be.

Mr. HAGER. The Senator from New Hampshire is mistaken in the assertion that this is any amendment. It is not any amendment of mine. It is a provision contained in the original bill as it came from the House of Representatives, and which the Senate has stricken out. My purpose is to restore that provision. It is not therefore an amendment originating with me. The bill as originally drawn contained the provision, and in that respect it corresponds with the other portions of the bill. If that provision be stricken out, for the same reason the same provision twice repeated in section 2 should also be stricken out—"of lands within said reservations to railroad corporations are hereby ratified and confirmed." Then it proceeds further. "And said Seneca nation may, in accordance with their laws and form of government, lease lands within said reservations for railroad purposes;" and again, "Said Seneca Nation may, in accordance with their laws and form of government," &c.; so that section 2 has twice repeated the same clause that has been stricken out in section 4, which is a limitation to some extent in that section, as follows:

That this act shall not be construed to ratify or confirm leases which according to the laws or customs of said Seneca Nation are invalid.

If there is anything in the argument that has been urged in favor of striking out this provision, for the same reason the same provision twice repeated should be stricken out in section 2. But, as I said, it was intended to make the bill uniform in all its provisions and limitations. It is in conformity with section 3. As the bill stands it has a purpose in view to allow the ratification of leases that have been made according to the customs of the nation that are valid, that are according to the custom of the nation, and nothing more. By striking out this provision you open the door for the admission of all kinds of leases, valid or invalid.

The PRESIDING OFFICER. The question is on concurring in the amendment made as in Committee of the Whole.

The amendment was rejected.

Mr. McCREERY. The proviso is now left in the bill.

The PRESIDING OFFICER. The proviso is left in the bill.

Mr. INGALLS. I think there is a misapprehension in the statement made by the Chair as to the effect of the last vote. My understanding was that the Senate agreed to the amendment reported from the Committee of the Whole striking out that proviso.

Mr. SHERMAN. The effect of the vote is undoubtedly to leave the proviso in.

The PRESIDING OFFICER. That is the effect.

Mr. SHERMAN. The Senate disagreed to the committee's amendment.

Mr. INGALLS. The Senator from California moved that the Senate disagree to the amendment, as I understood.

The PRESIDING OFFICER. The question was on concurring in the amendment made as in Committee of the Whole. The Chair suggested to the Senator from California that on that motion he would be able to take the sense of the Senate. That was the suggestion of the Chair, but the question was on concurring in the amendment made as in Committee of the Whole in the ordinary form.

Mr. INGALLS. Then the question should be again submitted, because it was misunderstood by the Senate.

Mr. BOGY. I voted wrong. I thought the question was on the amendment of the Senator from California.

Mr. FENTON. Will the Chair state the effect of the vote before he puts the question again?

The PRESIDING OFFICER. The Chair will reput the question; which is on concurring in the amendment made as in Committee of the Whole.

Mr. BAYARD. Was not the question already decided by the Chair and by the vote of the Senate?

The PRESIDING OFFICER. The Chair stated the result of the vote; but Senators then said that they voted under a misapprehension. Under that view of the case, the Chair would feel warranted in putting the question. Does the Senator object?

Mr. BAYARD. No, sir.

The PRESIDING OFFICER. The question is on concurring in the amendment made as in Committee of the Whole.

The question being put, there were on a division—ayes 19, noes 17; no quorum voting.

Mr. INGALLS. I call for the yeas and nays.

The yeas and nays were ordered.

Mr. DAVIS. On this question I am paired with the Senator from [920] Louisiana. [MR. WEST.] If he were here he would vote "yea," and I should vote "nay."

The question being taken by yeas and nays, resulted—yeas 29, nays 16; as follows:

YEAS—Messrs. Allison, Anthony, Bogy, Bontwell, Cameron, Chandler, Clayton, Conkling, Fenton, Ferry of Michigan, Flanagan, Frelinghuysen, Hamlin, Harvey, Hitchcock, Ingalls, Kelly, Logan, Mitchell, Morrill of Maine, Morrill of Vermont, Patterson, Pratt, Scott, Spencer, Tipton, Wadleigh, Washburn, and Wright—29.

NAYS—Messrs. Bayard, Boreman, Cooper, Gilbert, Hager, Hamilton of Texas, McCreery, Merrimon, Norwood, Oglesby, Ransom, Robertson, Saulsbury, Sherman, Stevenson and Stockton—16.

ABSENT—Messrs. Alcorn, Brownlow, Buckingham, Carpenter, Conover, Cragin, Davis, Dennis, Dorsey, Edmunds, Ferry of Connecticut, Goldthwaite, Gordon, Hamilton of Maryland, Howe, Johnston, Jones, Lewis, Morton, Pease, Ramsey, Sargent, Schurz, Sprague, Stewart, Thurman, West, and Windom—28.

So the amendment was concurred in.

The PRESIDING OFFICER. The next amendment made as in Committee of the Whole will be read.

The Chief Clerk read the following words, to be added to the fourth section:

And in case the said lessors and lessees or occupants cannot agree upon the amount of said rents to be paid by any lessee or occupant, then the said Indians in council shall choose a person, and the said lessee or occupant shall choose a person, and if those so chosen cannot agree upon said rents, then the said referees shall choose a person, and the amount agreed upon by said referees, or a majority of them, shall be the amount of the rent to be paid by the said lessee or occupant.

Mr. SCOTT. The discussion upon this bill has satisfied me that the purpose of it is right and that it ought to pass, and I am therefore a friend to the purpose of the bill; but I ask attention to this fourth section for

one moment, because I think the amendment proposed to it requires further amendment. The first clause of the section applies to unexpired leases; the second clause applies to leases to be made in the future. Upon the unexpired leases there are occupants. Then comes the language of the amendment, which provides in effect that both as to the unexpired leases and as to the leases to be made in the future, where the individual Indian cannot agree with the lessee or occupant, then a tribunal provided for is to be called in to fix the amount of the rent. Now, if the Indian cannot in the future agree with any lessee as to the rent that ought to be paid, there ought to be no lease; and therefore the amendment ought to be so altered as to apply only to unexpired leases upon the lands embraced in which there are occupants. I therefore move to amend it to conform to that idea, and I have written into the amendment such words as will produce that effect. I send them to the Clerk, and move to amend in that way.

Mr. INGALLS. I will say that I have advised with the Senator from Pennsylvania, and am familiar with the terms of his amendment, and I think it is just, and that it should be adopted by the Senate.

The PRESIDING OFFICER. It will be agreed to, if there be no objection.

Mr. BOGY. I do not consent to it. As I understand the phraseology of the bill, necessarily the mode provided for the ascertainment of the rent has reference alone to those leases which have been made heretofore. It cannot be otherwise, because in leasing in the future it is a question of contract. It cannot apply by any possibility, and was not intended to apply to anything but leases that are already *in esse*. In leases to be made hereafter, as a matter of course, the amount is to be regulated by the contract which is to be made; and this

cannot apply to leases in the future by my construction, and therefore the modification suggested seems entirely unnecessary.

Mr. SCOTT. But the difficulty is that the language does apply to leases to be made in the future, and if the Senator will have it read he will see that it does.

The PRESIDING OFFICER. The amendment will be reported.

The CHIEF CLERK. It is proposed to amend the amendment made as in Committee of the Whole so as to read:

And in case the lessors and occupants under former leases cannot agree upon the amount of rents to be paid, then the said Indians in council shall choose a person, and the said occupant shall choose a person, and if those so chosen cannot agree upon said rents, then the said referees shall choose a person, and the amount agreed upon by said referees, or a majority of them, shall be the amount of the rent to be paid by said occupant.

Mr. BOGY. That is the bill now according to my construction.

The amendment to the amendment was agreed to.

The amendment, as amended, was concurred in.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

Mr. MCCREERY, and Mr. HAMILTON of Texas, called for the yeas and nays on the passage of the bill.

The yeas and nays were ordered.

Mr. STEVENSON. On this question I am paired with the Senator from Arkansas, [MR. DORSEY.] If he were here he would vote "yea," and I should vote "nay."

Mr. SAULSBURY. I was requested by the Senator from West Virginia [MR. DAVIS] to state when his name was called that he was paired with the Senator from Louisiana, [MR. WEST.] If he were here the Senator from West Virginia would vote "nay," and the Senator from Louisiana would vote "yea."

The question being taken by yeas and nays, resulted—yeas 29, nays 17; as follows:

YEAS—Messrs. Allison, Anthony, Bogy, Boreman, Cameron, Chandler, Clayton, Conkling, Fenton, Ferry of Michigan, Flanagan, Gilbert, Hamlin, Harvey, Hitchcock, Ingalls, Kelly, Logan, Mitchell, Morrill of Maine, Morrill of Vermont, Patterson, Pratt, Scott, Spencer, Tipton, Wadleigh, Washburn, and Wright—29.

NAYS—Messrs. Alcorn, Bayard, Boutwell, Cooper, Dennis, Frelinghuysen, Hager, Hamilton of Texas, McCreery, Merrimon, Norwood, Oglesby, Ransom, Robertson, Saulsbury, Sherman, and Stockton—17.

ABSENT—Messrs. Brownlow, Buckingham, Carpenter, Conover, Cragin, Davis, Dorsey, Edmunds, Ferry of Connecticut, Goldthwaite, Gordon, Hamilton of Maryland, Howe, Johnston, Jones, Lewis, Morton, Pease, Ramsey, Sargent, Schurz, Sprague, Stevenson, Stewart, Thurman, West, and Windom—27.

So the bill was passed.

Congressional Record [995]
February 2, 1875

* * *

SENECA NATION OF NEW YORK INDIANS.

On motion of Mr. LAWSON, by unanimous consent, the amendments of the Senate to the bill (H. E. No. 3080) to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany reservation and to confirm existing leases were taken from the Speaker's table and referred to the Committee on Indian Affairs.

* * *

Congressional Record [1305]
February 6, 1875

CATTARAUGUS AND ALLEGANY RESERVATIONS.

The PRESIDING OFFICER. The unfinished business is the resolution of the Senator from Indiana, [MR. MORTON,] on which the Senator from California [MR. SARGENT] is entitled to the floor.

Mr. SARGENT. I think I can conclude my remarks in the hour that is left.

Mr. FENTON. I ask the Senator from California to yield one moment that a vote may be taken upon a conference report which is on the Clerk's table. The report was read and went over yesterday under objection.

Mr. SARGENT. If I yield, I suppose I must give up any hope of concluding my remarks within the hour.

The PRESIDING OFFICER. Does the Senator decline to yield?

Mr. SARGENT. If it will only take a moment I will yield.

The PRESIDING OFFICER. The question is on agreeing to the report of the committee of conference on the disagreeing votes of the two Houses on the bill (H. R. No. 3080) to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany reservations, and to confirm existing leases.

The report was concurred in, being as follows:

That the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. No. 3080) to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany reservations, and to confirm existing leases, having met, after a full and free conference have agreed to recommend, and do recommend, to their respective Houses, as follows:

That the Senate recede from its amendments, and that the fourth section of the bill be stricken out and the following be inserted: "All leases of land situate within the limits of said villages when established as hereinbefore provided, except those provided for in the second section of this act, in which Indians of said Seneca Nation, or persons claiming under them, are lessors, shall be valid and binding upon the parties thereto, and upon said Seneca Nation, for a period of five years from and after the passage of this act, except such as by their terms may expire at an earlier date: and at the end of said period, or at the expiration of such leases as terminate within that time, said nation, through its councilors, shall be entitled to the possession of the said lands, and shall have the power to lease the same: *Provided, however,* That at the expiration of said period, or the termination of said leases, as hereinbefore provided, said leases shall be renewable for periods not exceeding twelve years, and the persons who may be at such time the owner or owners of improvements erected upon such lands shall be entitled to such renewed leases, and to continue in possession of such lands, on such conditions as may be agreed upon by him or them and such councilors; and in case they cannot agree upon the conditions of such leases or the amount of annual rents to be paid, then the said councilors shall appoint one person and the other party or parties shall choose one person as referee to fix and determine the terms of such lease and the amount of annual rent to be paid; and if the two so appointed and chosen cannot agree, they shall choose a third person to act with them, the award of whom or the major part of whom shall be final and binding upon the parties; and the person or persons [1306] owning said improvements shall be entitled to a lease of said land and to occupy and improve the same

according to the terms of said award, he or they paying rent and otherwise complying with the said lease or said award; and whenever any lease shall expire after its renewal as aforesaid, it may, at the option of the lessee, his heirs and assigns, be renewed in the manner hereinbefore provided."

And the House agree to the same.

The committee of conference further recommend for the consideration of the two Houses that the first section of the bill be stricken out, and the first two lines of the second section be stricken out, and that the following be inserted:

"That all leases of land within the Cattaraugus and Allegany reservations in the State of New York heretofore made by or with the authority of the Seneca Nation of New York Indians."

JOHN J. INGALLS,
W. B. ALLISON,
LEWIS V. BOGY,
Managers on the part of the Senate.
B. W. HARRIS,
W. L. SESSIONS,
A. COMINGO,
Managers on the part of the House.

Congressional Record [1321]
February 19, 1875

* * *

SENECA NATION OF NEW YORK INDIANS.

* * *

Mr. SESSIONS submitted the following report:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. No. 3080) to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany reservations, and to confirm existing leases, having met, after a full and free conference have agreed to recommend, and do recommend, to their respective Houses, as follows:

That the Senate recede from its amendments, and that the fourth section of the bill be stricken out and the following be inserted: "All leases of land situate within the limits of said villages when established as hereinbefore provided, except those provided for in the second section of this act, in which Indians of said Seneca Nation, or persons claiming under them, are lessors, shall be valid and binding upon the parties thereto, and upon said Seneca Nation, for a period of five years from after the passage of this act, except such as by their terms may expire at an earlier date: and at the end of said period, or at the expiration of such leases as terminate within that time, said nation, through its councilors, shall be entitled to the possession of the said lands, and shall have the power to lease the same: *Provided, however,* That at the expiration of said period, or the termination of said leases, as hereinbefore provided, said leases shall be renewable for periods not exceeding twelve years, and the persons who may be at such time the owner or owners of improvements erected

upon such lands shall be entitled to such renewed leases, and to continue in possession of such lands, on such conditions as may be agreed upon by him or them and such councilors; and in case they cannot agree upon the conditions of such leases or the amount of annual rents to be paid, then the said councilors shall appoint one person and the other party or parties shall choose one person as referee to fix and determine the terms of such lease and the amount of annual rent to be paid; and if the two so appointed and chosen cannot agree, they shall choose a third person to act with them, the award of whom or the major part of whom shall be final and binding upon the parties; and the person or persons owning said improvemnts shall be entitled to a lease of said land and to occupy and improve the same according to the terms of said award, he or they paying rent and otherwise complying with the said lease or said award; and whenever any lease shall expire after its renewal as aforesaid, it may, at the option of the leesee, his heirs and assigns, be renewed in the manner hereinbefore provided."

And the House agree to the same.

The committee of conference further recommend for the consideration of the two Houses that the first section of the bill be stricken out, and that the following be inserted: "That all leases of land within the Cattaraugus and Allegany reservations in the State of New York heretofore made by or with the authority of the Seneca Nation of New York Indians."

B. W. HARRIS,
W. L. SESSIONS,
A. COMINGO,
Managers on the part of the House.
JOHN J. INGALLS,
W. B. ALLISON,
LEWIS V. BOGY,
Managers on the part of the Senate.

* * *

Mr. SENER. I desire to ask the gentleman from New York [MR. SESSIONS] whether this is the same report that was recommitted in the Senate yesterday because it undertook to interfere with legislation that was not in disupte between the two Houses?

Mr. SESSIONS. That has been corrected by the committee of conference, who have unanimously agreed upon this report.

The report was agreed to.

Congressional Record [1514]
February 19, 1875

* * *

MESSAGE FROM THE PRESIDENT

* * *

Here the committee rose informally; and Mr. TYNER having taken the chair as Speaker *pro tempore*,

A message from the President, by Mr. O. E. BABCOCK, his Private Secretary, announced that the President had approved and signed bills and joint resolutions of the House of the following titles:

* * *

A bill (H. R. No. 3080) to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany reservations; and to confirm existing leases;

* * *

APPENDIX F(3)

Letter From the Secretary of the Interior
(Washington, D.C. September 24, 1914)

HOUSE OF REPRESENTATIVES

63RD CONGRESS, *3d Session.* } { H. DOC. No. 1590

SENECAS AND OTHER INDIANS OF THE FIVE NATIONS OF NEW YORK.

LETTER

FROM

THE SECRETARY OF THE INTERIOR,

TRANSMITTING

REPORTS OF THE INTERIOR DEPARTMENT AND THE DEPARTMENT OF JUSTICE ON A BILL (H. R. 18735) TO SETTLE THE AFFAIRS OF THE SENECAS AND OTHER INDIANS OF THE FIVE NATIONS IN THE STATE OF NEW YORK.

FEBRUARY 12, 1915.—Ordered to be printed as a House document.

DEPARTMENT OF THE INTERIOR,
Washington, September 24, 1914.

My DEAR MR. STEPHENS: I have the honor to acknowledge receipt of your letter of September 16, 1914, transmitting a copy of H. R. 18735, providing for an

allotment in severalty of the Indian lands in the State of New York. I note that you have also forwarded a copy of the bill to the Department of Justice.

As the wording of the bill will disclose, the situation respecting the Indian lands in New York is somewhat peculiar. Accordingly I have taken the matter up with the Attorney General in order to obtain his views with reference thereto, and at a later date I shall be pleased to furnish you with further report for the information of your committee.

Cordially, yours,

A. A. JONES,
First Assistant Secretary.

HON. JOHN H. STEPHENS,
Chairman Committee on Indian Affairs,
House of Representatives.

[2] A BILL Authorizing the allotment in severalty of Indian lands in New York State, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That the Attorney General be, and he hereby is, authorized and directed to institute such suit or suits as may be necessary in the Federal courts of the United States to test the validity and extent of the claim of the so-called Ogden Land Company in and to the lands embraced within any of the Indian reservations in the State of New York.

SEC. 2. That the Seneca Nation, being a corporate body under the laws of the State of New York, by appropriate resolution, agreed to by a majority of the members of the corporate body, on which resolution all the adult members, both male and female, of the Seneca Nation shall have the right to vote, may consent to a division of their lands in severalty and may authorize the president

of the Seneca Nation to execute tribal or corporate deeds for particular tracts of land to individual members of the tribe, as hereinafter provided, said deeds to be signed by the president of said Seneca Nation, attested to under the seal of the corporate body by the secretary of said nation, and approved by the Secretary of the Interior.

SEC. 3. That the Secretary of the Interior be, and he hereby is, authorized to appoint a commission consisting of three members, one of whom shall represent the Interior Department, one the Seneca Nation of Indians, and the third to represent the State of New York, to be designated by the governor of said State, subject to approval by the Secretary of the Interior. The commission so appointed shall constitute a board for the purpose of appraising, dividing, and allotting in severalty the surface of the lands of the Seneca Indians in New York, which division or allotment shall be based on an average value of the allottable lands, to be ascertained by dividing the total number of members of the tribe entitled to allotment into the total value of the surface of the tribal lands of the Seneca Nation subject to allotment, as hereinafter provided. The improvements on any of said allottable lands placed thereon by individual members of said nation entitled to allotment, or otherwise owned by them shall not be included in any appraisement authorized hereby, nor shall the oil, gas, limestone, or similar deposits of a metalliferous or nonmetalliferous nature be included in said apparaisement, such deposits being hereby reserved for the benefit of the tribe at large and subject to lease for their benefit, as now provided by law. Any and all lands heretofore occupied by or used in connection with any school, church, missionary, religious, cemetery, administrative, or other tribal or governmental purposes

shall not be appraised, but all of such lands are hereby specifically reserved from allotment hereunder. Such additional land as in the judgment of the commission may reasonably be needed for future use for school, church, missionary, religion, cemetery, administrative, or other tribal or governmental purposes shall not be included in the appraisement provided for herein, and the Secretary of the Interior is hereby authorized to withhold such land from allotment or other disposition. The lands included in the villages of Vandalia, Carrollton, Great Valley, Salamanca, West Salamanca, and Red House, the establishment of which was had under the act of February nineteenth, eighteen hundred and seventy-five (Eighteenth Statutes at Large, page three hundred and thirty), or any other legally constituted village or town, shall not be included in said appraisement. The members of said commission shall be paid a salary of $10 per day each while actually and necessarily employed, and in addition thereto shall be allowed their actual necessary traveling expenses, including sleeping-car fare, but exclusive of subsistence. Said commission, by and with the approval of the Secretary of the Interior, and at such compensation as may be fixed by him, may employ such clerks, surveyors, timber cruisers, or other assistants as may be necessary to carry out the provisions of this act.

SEC. 4. That the commission authorized to be created hereby shall prepare, or cause to be prepared, a roll, subject to approval by the Secretary of the Interior, showing the membership of the Seneca Indians in the State of New York entitled to share in the distribution of the tribal or corporate assets, and on completion of the appraisement and ascertainment of the standard value of an allotment or each member's share thereof, such commission shall proceed to allot in severalty to the individual members of such nation such tract or tracts of

land within the Allegany and Cattaraugus Reservations in said State as may be cultivated, improved, occupied, or selected by such individual members, in such areas, however, as not to exceed the standard value of an allotment. Selections for minor children shall be made by their parents, and selections for orphans shall be made by the commission to be appointed hereunder. No person who is not in being at the time of allotment by the commission shall be given an assignment of land.

SEC. 5. That individual members of the Seneca Tribe desiring to acquire more land than represented by the standard value of an allotment as fixed by said commission [3] may, with the consent of the Secretary of the Interior and under such rules and regulations as he may prescribe, purchase "allotment rights" from other members of the band desiring to sell. All moneys received from the sale of such rights shall be deposited in some suitable bank or banks to the credit of the party selling such rights and shall be subject to all the rules and regulations governing the handling of individual Indian money. The commission created hereby shall keep a complete record of all such sales and shall procure from the individuals selling such "allotment rights" an acknowledgment in proper form that the sale thereby made is a full and complete extinguishment of the right of the person therein named to share in the lands of the Seneca Nation, except such as may be otherwise reserved under the provisions of this act.

SEC. 6. That the Secretary of the Interior shall cause to be prepared and furnished for use of the commission a form of tribal or corporate deed which, in addition to reciting the claim or preemption right of the so-called Ogden Land Company (should such claim be recognized by the courts), shall further recite the retention in the

tribe at large of the oil, gas, limestone, and other deposits of a similar nature as provided in section three hereof. Such deeds shall also recite that the lands thereby allotted shall not be subject to lease, sale, mortgage, alienation, taxation, or any other encumbrance for a period of twenty-five years from the date thereof without the consent of the Secretary of the Interior, as hereinafter provided. After approval of the tribal or corporate deeds as herein provided the individual allottees of the Seneca Band may lease their allotments made hereunder for a term of not exceeding ten years for agricultural or grazing purposes, under such rules and regulations as the Secretary of the Interior may prescribe.

SEC. 7. That during the twenty-five-year trust period the land of any individual allottee, which the consent of such allottee, or his heirs in case of death, may again be appraised and offered for sale under such rules and regulations as the Secretary of the Interior may prescribe. If it should be found by the courts that the Ogden Land Company, so called, has a preference right to purchase the lands of the Indians of the Seneca Nation, such individual allotments as may be offered for sale hereunder shall be so offered as to give the said Ogden Land Company, its successors or assigns, a period of ninety days within which to exercise its preference right to first purchase. Should such right not be exercised by said company, its successors or assigns, during such ninety-day period the right of such company, its successors or assigns, to first purchase shall thereby and thereupon become forfeited, and the lands so offered for sale may be sold to the highest and best bidder.

SEC. 8. That upon approval by the Secretary of the Interior of the tribal or corporate deeds in severalty as herein provided the patentees named therein shall

thereby become citizens of the United States and amenable to the laws of the United States and of the State or Territory where such allottees may then reside.

SEC. 9. That all of the lands in any and all of the Indian reservations in the State of New York are hereby declared to be "Indian country" within the meaning of the act of June thirtieth, eighteen hundred and thirty-four (Fourth Statutes at Large, page seven hundred and twenty-nine), and all the laws of the United States prohibiting the introduction of intoxicants into the Indian country are hereby extended over and shall apply to all Indian lands in the State of New York until otherwise provided by Congress.

SEC. 10. That the provisions of this act, as far as applicable, shall extend to any and all of the other Indians and reservations in the State of New York.

SEC. 11. That there is hereby appropriated, out of any money in the Treasury of the United States not otherwise appropriated, the sum of $75,000 to enable the Attorney General and the Secretary of the Interior to carry out the provisions of this act.

DEPARTMENT OF JUSTICE,
Washington, D. C., September 28, 1914.

HON. JOHN H. STEPHENS,
Chairman Committee of Indian Affairs,
House of Representatives.

DEAR SIR: I beg to acknowledge the receipt of your letter of the 16th instant, inclosing a copy of H. R. 18735, entitled "A bill authorizing the allotment in severalty of Indian lands in New York State, and for

other purposes." I lack the information necessary [4] to enable me to make any practical suggestions concerning the New York Indians and their affairs and the practical need of such a measure as this for the amelioration of their condition. Suggestions in these regards will come to you, I presume, from the Secretary of the Interior. Neither am I apprised of the nature of the claim of the Ogden Land Co., which is mentioned in the first section and elsewhere in the bill.

Advising you first that my understanding of the bill and its purposes is derived wholly from the bill itself, I would say that I see no objection to it other than the following:

1. While the bill does not say so expressly, I assume that the Secretary of the Interior, in carrying it out, would be expected to defer the appointment of the commission mentioned in section 3 until after the claim of the Ogden Land Co., whatever it may, had been finally adjudicated. Section 6 provides that the deeds hereafter to be delivered to the allotees by the commission shall recite the existence of that claim if "recognized by the courts." It can not well be the intention to appoint the commission possibly years before the final adjudication can be accomplished, and therefore I take it for granted that the appointment should not take place until after the claim of the Ogden Land Co. had been passed upon by the highest appellate court to which it could go (doubtless the Supreme Court of the United States) in the case contemplated by section 1, unless possibly, the Attorney General, upon being defeated by the company in a lower court, should conclude to abandon the litigation there. It may be that your committee could make the bill more definite here.

2. It has been suggested to me that the provision in section 4 that "no person who is not in being at the time of allotment by the commission shall be given an assignment of land" may cause trouble. The process of allotment may continue through a considerable period of time and new members of the tribe may be born during the period. It would be well, I think, to provide affirmatively that when the roll mentioned in section 4 shall have been prepared by the commission and approved by the Secretary of the Interior, it shall be deemed final and conclusive upon the right to allotment in so far as any children born thereafter may be concerned.

3. Section 5 allows individual members to buy the allotment rights of other members "with the consent of the Secretary of the Interior and under such rules and regulations as he may prescribe." This provision, as far as I know, is not found in any allotment act heretofore passed. A mere novelty, however, is no objection. The principal things to be guarded against in all legislation of this sort are improvidence and overreaching. As, in this instance, the transactions contemplated are only permissible with the consent of the Secretary of the Interior and under his rules and regulations, I have no criticism to make upon this part of the bill save that it may involve undue complexities of administration.

4. Section 6 allows conveyance of allotted lands by the allottees after 25 years from the dates of the tribal deeds. Restraints of this sort are attached to allotments upon the theory that the allottees are incapable of managing their own affairs. While it has been customary to name a definite date after which the allottees may convey, I submit that experience has demonstrated the folly of assuming in this manner that the average Indian,

incompetent [5] to-day will become competent within any period arbitrarily fixed. On the contrary, it is safe to assume that the average adult who is not competent now will never become competent as long as he lives to safeguard his own interests. Consequently these legislative presumptions of competency not only fly in the face of well-known facts, but, it seems to me (and I make the suggestion with much deference), are indulged in with too much regard for the idea of getting rid of the Indian and developing his property and too little regard from protecting and developing the Indian himself. I would advise, therefore, that instead of fixing a definite period, as is done in section 6, the section be amended to declare that none of the lands allotted shall be subject to taxation or to any form of alienation, encumbrance, or lease, while in the ownership of the allottees or their heirs, except in respect of such persons as the Secretary of the Interior, upon special inquiry, shall have adjudged to be competent to manage their own affairs.

In line with this suggestion it seems to me that the 10-year period of lease authorized in the last sentence of section 6 is probably too long.

5. The use of the expression "trust period" in section 7 may be objectionable from a technical standpoint. If the tribe owns the fee there is, properly speaking, no trust affecting the allottees' title under the tribal deeds other than the general power of guardianship residing in the Government. I assume that the tribe does own the fee; but if the fee be in the United States, then I would suggest the propriety of some provision whereby that title may be conveyed when the time comes for the removal of all restrictions.

6. Section 8 provides that upon approval of the tribal deeds the patentees named therein shall become citizens of the United States and amendable to the laws of the

United States and of the State or Territory where they may then reside. Provisions like this, particularly the declaration subjecting the individual to the laws of the State, are constantly being revoked in the courts as an obstacle to the power of the Government to protect the incompetent Indian by legislation or by litigation instituted in his behalf. Out of abundant caution, therefore, I would suggest the insertion at the end of section 8 of the following proviso: "*Provided*, That the protective powers of the Government of the United States in respect of the said Indians and their property shall not be affected thereby."

A declaration of this sort, though not, in my opinion, necessary, may serve to forestall much useless litigation and controversy.

For the Attorney General.
Respectfully,

ERNEST KNAEBEL,
Assistant Attorney General.

Mr. Clancy, from the Committee on Indian Affairs, submitted the following report (to accompany H. R. 18735):

"The Subcommittee on Indian Affairs, to whom was referred the bill (H. R. 18735) authorizing the allotment in severalty of Indian lands in New York State, and for other purposes, having considered the same, report thereon with a recommendation that the bill be amended as proposed by the Department of Justice and the Department of the Interior and be given further consideration by the whole committee.

[6] "The legislation proposed in this bill is of such vast importance to the Indians of New York State, which has an Indian population greater than any other State east

of the Mississippi River, that it should receive the very careful attention, not only of the entire committee but of Congress, and in order that this subject may be thoroughly understood by those interested attention is called to the very complete report of the Office of Indian Affairs, Department of the Interior, as to the whole New York State Indian situation, which follows:

"J. R. CLANCY.
"DENVER S. CHURCH.
"C. M. HAMILTON."

The Lake Mohonk conference on the Indian and other dependent peoples have had for some years a committee on New York State Indians, which at their conference on October 14, 15, 16, 1914, report as follows:

"Your committee rejoices that in the further advancement of this work a bill was introduced into the House of Representatives on September 10, by Mr. Clancy, of New York, known as bill No. 18735, granting authority to the Attorney General of the United States to institute the necessary suit or suits in the case, providing for the appointment of a commission to appraise the Indian lands and to divide and allot them in severalty, and making the Indians thereafter citizens of the United States and subject to the laws of the State of New York. Your committee recommends that the conference express its approval of the action of the board of Indian commissioners and of the general plan of the House of Representatives bill referred to and that the committee of the conference on the New York Indians be discharged.

"For the committee.

"JAMES WOOD, *Chairman.*
"JOHN J. FITZGERALD.
"CHARLES E. LITTLEFIELD.
"REGIS H. POST.
"DANIEL SMILEY."

The report presented by Mr. Wood was accepted by the conference, and the committee on New York Indians discharged with thanks for its services.

DEPARTMENT OF THE INTERIOR,
Washington, January 22, 1915.

HON. JOHN H. STEPHENS,
Chairman Committee on Indian Affairs,
House of Representatives.

MY DEAR MR. STEPHENS: Reference is again made to your letter of September 16, 1914, transmitting a copy of H. R. 18735, providing for an allotment in severalty of the Indian lands in the State of New York.

Section 1 is designed to confer authority on the Attorney General to institute proceedings to test the validity and extent of the claim of the so-called Ogden Land Co. in and to the lands embraced within any of the Indian reservations in the State of New York, while the remainder of the bill contemplates an allotment in severalty of these lands as they now stand by making the tracts of individual allottees still subject to the claim of the company, if any such exists.

It is not deemed necessary here to go into an extensive resume of the history of the claim of the so-called Ogden Land Co., as this matter has previously been before the

Congress in various forms. (See Senate Executive Document No. 52, Fifty-third Congress, third session, and Senate Executive Document No. 154, Fifty-fourth Congress, second session: also hearings on House bill 1270, Fifty-seventh Congress, and House bill 7262, Fifty-eighth Congress.)

[7] For the information of your committee, however, it may be briefly stated that the Indian reservations in New York consist of the following:

The Allegany Reservation, lying in Cattaraugus County, embracing 30,469 acres, with an Indian population of about 923.

The Cattaraugus Reservation, lying mainly in Erie County with a small part falling also in the counties of Chautauqua and Cattaraugus, embracing an area of 21,680 acres, with an Indian population of 1,291.

The Oil Spring Reservation, containing 640 acres, lying partly within Allegany and partly in Cattaraugus Counties.

The three reservations above mentioned all belong to the Seneca Indians.

The Tuscarora Reservation, embracing 6,249 acres, lies within Niagara County and has an Indian population of 460.

The Tonawanda Reservation, containing 7,549 acres, with an Indian population of 489 members, lies partly in Erie, Genesee, and Niagara Counties.

The Onondaga Reservation, embracing 6,100 acres, with an Indian population of 541, lies in Onondaga County, about 5 miles south of the city of Syracuse.

The St. Regis Reservation, embracing 14,640 acres, lies in St. Lawrence and Franklin Counties, and has an Indian population on the American side of some 1,400 members. The Canadian Government has also provided a

reservation for St. Regis Indians, embracing some 12,000 acres, which adjoins the reservation in New York along the international boundary. The tribe is about evenly divided in population on the American and Canadian sides.

The Shinnecock Reservation on Long Island embraces but 450 acres, with and Indian population of about 400.

The claim of the so-called Ogden Land Co. covers only the Allegany and Cattaraugus Reservations and 1,920 acres of the Tuscarora Reserve, and its origin antedates the Federal Constitution. Shortly after the close of the Revolutionary War a dispute arose between the colonies of Massachusetts and New York over certain territory now embraced in the western part of the latter State, under conflicting grants or charters from the British Crown. The dispute was first submitted to the Continental Congress and a court was appointed to try and determine the cause. It was settled amicably, however, between the two States by convention December 16, 1786. A compact was drawn under which New York retained the right of government, sovereignty, and jurisdiction, but ceded to Massachusetts the right of preemption from the native Indians and such other right as the State of New York had. By a separate article in the compact Massachusetts was empowered to sell, assign, or otherwise convey such title as she derived. This the State of Massachusetts promptly proceeded to do, and the territory in which the Allegany, Cattaraugus, Tuscarora, and Tonawanda Reservations is located was sold by Massachusetts to Robert Morris in 1791. Several mesne conveyances transpired until we find the present claimant to be the Ogden Land Co., so called, which, however, is not incorporated.

Whatever claim the company had in and to the lands embraced within the Tonawanda Reservation was effectually extinguished by payment of the sum on $100,000 in accordance with the appropriation made and authority conferred by article 3 of the treaty with the Tonawanda Indians dated November 5, 1857 (11 Stats., 735). The Tuscarora Indians, who at one time lived in North Carolina, sold their lands in that State about the year 1800, realizing therefrom approximately $15,000. This money was deposited with the United States in trust, and in 1804 Congress authorized the Secretary of War to purchase additional land for these Indians. With this money, 4,329 acres lying to the south and east of 1,920 acres which had previously [8] been given to them by the Seneca Indians and the Holland Land Co. were purchased from the latter company, which effectually extinguished the preemptive right against these 4,329 acres within the reservation. The Holland Land Co. was the predecessor of the present claimant, the Ogden Land Co.

Much doubt seems to exist even among the courts, if conclusion can be reached from the decisions handed down, as to the exact nature of the claim of the Ogden Land Co.; many decisions holding in effect that the title acquired by the company through purchase from the State of Massachusetts is an "ultimate fee," an absolute fee," a "naked fee," a "qualified fee," etc. Other decisions tend to hold that the only right acquired by purchase from Massachusetts was simply the right of preemption, or a first right to purchase when the Indians agreed to sell. Persons whose opinions are not without weight have even suggested that the company has no valid claim against these lands, basing their opinion on the ground that New York had no power to sell to Massachusetts nor Massachusetts to convey to its

assignees. Be this as it may, we find that the claim has stood and been recognized repeatedly by the courts, both of the State and of the Nation, and it is not seen how the validity of the claim, whatever may be its nature, can well be denied at this late date. The courts of both the Nation and the State have also repeatedly denied the right or power of the claimant company in any way to interfere with the right of possession by the Indians, and for practical purposes the claim of the company is valueless in so far as the production of annual revenue is concerned.

When last approached on the question of disposing of their claim representatives of the company placed what was regarded as a fictitious value thereon. (H. Doc. 309, 54th Cong., 2d sess. and hearings on H. R. 12270, 57th Cong., and H. R. 7262, 58th Cong.) Some effective method of disposing of the claim, however, is desireable, in order that the objects designed to be accomplished by sections 2 to 11 of H. R. 18735 may be worked out.

The department is not prepared to state whether the plan suggested in sections 2 to 11 of the bill is feasible, but in connection therewith invites attention to a decision by the Supreme Court of the State of New York in the case of the Seneca Nation of Indians against Charles E. Appleby, surviving trustee of the Ogden Land Co., which decision will be found reported in 127 appellate division (New York reports) page 770. In its decision in that case the court, through Judge Spring, used the following language:

The affirmance of the judgment (of the lower court) does not establish the proposition that if the plaintiff becomes disintegrated that the defendant's title will vest in possession at once. Allotment among the individual Indians by the plaintiff has been permitted for a

considerable period by the National Government. Inheritance is allowed in accordance with the statutes of the State of New York, and conveyances amongst the Indians are also allowed. It may well be held that even though the nation in its tribal capacity should be dissolved, if the individual Indian holds his land by virtue of this recognized method of allotment, that the occupancy will continue to his remote descendant.

The case was appealed by the Indians and the appellate court in its decision dismissed the entire proceedings on the ground that the Indians were without power to sue and that the courts of the State had not been authorized to hear and determine the case. (196 New York Supreme Court Reports, 318.)

[9] Should the courts find room to hold that the lands within these reservations covered by the claim of the Ogden Land Co. can be allotted in severalty without a vesting of the right of that company to immediate possession it would appear the most feasible solution of the difficulty, in so far as the adjustment of the claims of that company is concerned, but since the introduction of the bill (H. R. 18735) a representative of the Indian Office has visited the reservations in that State with a view of ascertaining present conditions there. It is found that as a matter of fact practically all of the lands within the various Indian reservations in that State have already been allotted in severalty or divided among the tribal members many years ago under State laws by the tribal organizations, and that there is practically no surplus tribal or communal land available for further allotment at this time or for distribution to those younger members of the tribe who are now without land. The tribal division so made has been recognized by the tribal organizations, by the membership at large, and by

the courts of the State, until any disturbance of the present claimant would result in great dissatisfaction and no doubt in many cases gross injustice.

Some of the shrewd, far-sighted members of the tribes, by inheritance, by purchase from other members or otherwise, have acquired holdings largely in excess of a pro rata division of these lands among the present tribal membership. These holdings in a large number of cases have been improved with modern homes, excellent barns, and equipped with up-to-date farming implements. Where the title thus acquired has been by inheritance or by purchase it would hardly be just to deprive the present holders of any part of their lands without just compensation therefor. It should be understood, of course, that these people are without power to alienate their lands to persons other than members of the tribe, but sales have taken place between members of the same tribe, in many cases evidenced by deeds placed of record in the proper county, and these transfers and sales have been taking place practically for the last 25 years.

On the other hand, there is a great need for some feasible solution of the problem. Congress by treaty with these Indians have guaranteed them peaceful possession of the soil (treaty of Nov. 11, 1794, 7 Stats., 44), and the Supreme Court of the United States has denied the State the right to tax their lands. (The New York Indians, 5 Wall., 761). The State, therefore, is powerless to compel an adjustment of the situation, has been denied the right to tax, and can take no steps to make these lands subject to taxation without the assent of the Federal Government, yet the State has been under the burden of providing these people with adequate school facilities, maintaining highways over their reservations, and such police supervision as has been exercised over these people which has been greatly deficient. The "Indian

population" in New York, recognized as members of the various tribes there, exceeds 5,000, but it has been found on investigation that the number of full bloods among these people is very limited, with possibly even less than 500 half bloods in the entire State, and so many so-called "Indians" with such a large percentage of white blood that only the closest scrutiny would disclose any Indian characteristics.

These people are fully equipped from an educational, civilization, or financial standpoint to stand upon their own feet. They should [10] have been made citizens by allotment in severalty and the dissolution of tribal organizations years ago.

There is great need, therefore, of some workable plan by which this end can be reached, but the limited information as to present conditions on these reservations acquired by the brief examination heretofore made does not place the department in a position to suggest the most feasible course to pursue. A detailed survey of each reservation would be necessary in order to ascertain the present claimant or holder of each acre therein, the manner in which title was acquired, the number of Indians without land and their right to membership in the tribes, etc., before any just solution could be offered. Doubtless the conditions on the different reservations would be found so far at variance that one bill designed to fit conditions on all reservations could not well be formulated. Each reservation should be made the subject of a separate investigation and special study with a view of suggesting some feasible course to pursue with reference to the conditions on that particular reserve.

Again, an extinguishment of the claim of the Ogden Land Co. or a final decision by the courts on the exact extent and nature of that claim appears necessary before

further procedure can well be had. With this idea in view it may prove advisable to eliminate sections 2 to 11, inclusive, of the bill, which would enable the Department of Justice to bring about an authoritative determination of the matter. By letter dated September 28, 1914, the Department of Justice submitted to you a report on the bill, but did not raise any specific objection to section 1. It is presumed, therefore, that that department has no objection to offer to the procedure outlined in this section of the bill.

As it is understood that the Indians are uniformly opposed to the disturbance of present conditions and that the provisions of H. R. 18735, found in sections 2 to 11 inclusive, do not accord with conditions on the various reservations in the State of New York, it is respectfully recommended that these sections be eliminated from the bill and section 1 be amended by striking out the period after the word "York," in line 8, and adding thereto the following:

with the right of appeal to the Supreme Court of the United States by either party to the proceedings, and jurisdiction is hereby conferred on such courts to hear and determine the cause.

There should also be a provision appropriating sufficient money to enable the Department of Justice to carry out the provisions of the law, but I am not sufficiently advised in the premises to offer a suggestion as to the specific amount.

For the further information of your committee I am inclosing a copy of a report by the representative of the Indian Office detailed to investigate conditions on the Indian reservations in the State of New York; also copy of a petition signed by a number of Tuscarora Indians protesting against the passage of the bill, which petition was received by the Indian Office on January 12, 1915.

Cordially,

FRANKLIN K. LANE.

WASHINGTON, D.C., *December 26, 1914.*

The honorable the COMMISSIONER OF INDIAN AFFAIRS.

SIR: Assistant Commissioner Meritt, being firmly impressed with the necessity of taking some definite action looking to an effective solution of the New York Indian problem, instructed me orally in the early fall of 1913 "to get to the bottom of it," if possible. Later you authorized me in writing to visit the several reservations in that State so as to present existing conditions there. The question has proven of great interest and increasing importance as the investigation progressed. Mr. Meritt's conviction "that something should be done" is undoubtedly correct, as the facts hereinafter presented will show. Present conditions on these reservations are so directly traceable to the time when this country was first occupied by the Europeans that a brief recourse to colonial history is essential.

Early colonists in what is now western New York found the country more or less densely populated by aborigines of various tribes, principally the Senecas, Cayugas, Onondagas, Oneidas, and Mohawks. These five tribes or nations were united in a common league, known among themselves as Ho-de-no-sau-nee, but generally designated by the whites as "Iroquois," and were much feared during the early days. In the Iroquois council the Onondagas, as the founders of the league, kept the central fire; the Mohawks guarded the eastern portal, and the Senecas the western. The Oneidas were stationed between the central fire and the east, while the Cayugas occupied a similar position in the West. One can but pause to wonder if exploration into ancient traditions of these people would not disclose an organization bordering strongly on free masonry.

About 1710 the Tuscaroras, then living in North Carolina, became involved in quarrels with white settlers and adjoining Indian tribes there. Having been severely defeated in battle they migrated to New York and were formally united with the five tribes just mentioned, thus making the Six Nations of New York, by which name these Indians are now most commonly known. At the period of its greatest strength—the latter part of the seventeenth century—the Iroquois league numbered 15,000 souls, and even to this day the union still continues to some extent, although its component membership as to tribes has materially changed.

With the exception of the Oneidas and a part of the Tuscaroras, these Indians sided with the mother country in the Revolution and were left unmentioned and unprovided for in the treaty of peace between Great Britain and the confederated Colonies. Naturally considerable unrest existed among them at the close of the Revolution, due to the fact that in the main they had sided with the losing party in that great struggle. The Mohawks moved to Canada and settled on lands provided for them by the British Government, where a remnant of this tribe still lives. By treaty the Mohawks ceded to the State whatever title they had to any land in New York, and subsequently the St. Regis Indians were formally adopted by the Six Nations in place of the Mohawks.

The Cayugas also sold their land to the State and gradually migrated westward, locating first in the Ohio Valley, but finally removing to the Indian Territory and becoming affiliated with other tribes there. A few Cayugas still remain in New York, residing principally with the Senecas and Tonawandas—the latter an offspring of the Seneca Tribe being frequently

designated "The Tonawanda Band of Seneca Indians." The State paid the Cayugas at the rate of 4 shillings per acre and thereafter sold the land for 16 shillings per acre. About 1853 representatives of the tribe began to petition the State for the difference in price between the one paid to them and that received by the State. Finally, in 1909, the legislative assembly authorized the land commissioner to adjust and settle the claim of the Cayuga Indians against the State for a sum not exceeding $297,131.20, with an additional allowance of $27,131.20 for legal expenses incurred.

The Oneidas also, by various treaties, sold all of their land, except about 350 acres, to the State, and removed to the reservation in Wisconsin procured from the Menominees by treaty with the Federal Government. The 350 acres in New York belonging to the Oneidas have long since been divided in severalty under State laws, and as a tribe these Indians are known no more in that State. Six tribes still remain in New York, to be regarded as of any importance at this time, viz, the Senecas, Tonowandas, Tuscaroras, Onondagas, St. Regis, and Shinnecocks, the latter, however, never having formed a union in the Six Nations, although at one time they did pay tribute to the Mohawks. A brief statement as to the status of the lands in each reservation is here presented in order that a clearer understanding of the matter may be reached.

The Allegany Reservation, claimed by the Senecas, contains 30,469 acres, and is located on both sides of the Allegany River in Cattaraugus County, N. Y. It is [12] about 40 miles long and averages from 1 to 3 miles in width. It is a part of the area specifically reserved to the Seneca Indians in the treaty with Robert Morris at "Big Tree" September 17, 1797. This entire reservation is

subject to the "preemption right" or "claim" of the Ogden Land Co., to which reference is hereinafter more fully made.

The Cattaraugus Reservation contains 21,680 acres, located principally in Erie County, a small part lying in each of the counties of Cattaraugus and Chautauqua. This reservation was conveyed to the Seneca Indians by Wilhelm Willnick, et al., predecessors of the Ogden Land Co., by agreement dated June 30, 1802 (7 Stats., 70), in return for which the Seneca Indians surrendered to the company certain other lands which had been reserved to them by the treaty at Big Tree. This reservation is also subject to the preemption right of the Ogden Land Co., such right being specifically retained in the agreement referred to.

The Oil Spring Reservation, located partly in Allegany and partly in Cattaraugus Counties, contains only 640 acres. Its name is derived from a muddy pool, about 20 feet in diameter, located near the center of the tract, from which the Indians formerly gathered a sort of crude petroleum locally known as "Seneca oil" and which was used quite extensively by them in early days for medicinal purposes. The Senecas fully understood that this tract was reserved to them in the sale to Robert Morris at Big Tree, but this fact does not appear from an examination of the treaty itself. At any rate, this reserve was included in a sale by Robert Morris to the Holland Land Co., so-called, and several mesne conveyances transpired until by deed dated February 28, 1855, one Philoneus Pattison became the ostensible owner of a part thereof. On taking possession, the Seneca Indians promptly began an action in ejectment against Pattison. A verdict in favor of the Indians was rendered by the lower court; the case was appealed to the supreme court of the State

and finally to the court of appeals, both of which affirmed the decision of the trial court, and the Indians have since remained in undisturbed possession. A written opinion of the case does not appear to have been handed down, but the pleadings, transcript of evidence, judgment, and decree of the court are still on file in Little Valley, the county seat of Cattaraugus County.

The Onondaga Reservation contains 6,100 acres and is located in Onondaga County about 5 miles south of the city of Syracuse. Prior to 1793 this reservation embraced something over 65,000 acres. March 11 of that year, however, the Indians sold over three-fourths of their reservation to the State, and by subsequent treaties in 1795, 1817, and 1822 the reservation was reduced to its present area. Under State laws these Indians are authorized to lease land owned or possessed by individuals and small areas within the reservation are so leased. The lands within this reservation are not covered by the claim of the Ogden Land Co.

The Tonawanda Reservation now comprises but 7,549 acres lying partly in Erie, Genesee, and Niagara Counties. Originally it comprised upward of 45,000 acres, being a part of the lands reserved to the Seneca Indians in the sale of Robert Morris at Big Tree. This reservation was conveyed to Thomas Ludlow Ogden and Joseph Fellows by agreement with the Six Nations, dated January 15, 1838 (7 Stats., 550), and the subsequent treaty with the Senecas of May 20, 1842 (7 Stats., 586). The lands embraced within the present reserve were repurchased from Ogden and Fellows for the sum of $100,000, in accordance with artcle 3 of the treaty with the Tonawanda Indians, dated November 5, 1857 (11 Stats., 735). Title was first taken in the Secretary of the Interior, who held the lands until February 14, 1862, on

which date, by deed, they were conveyed to the comptroller of the State of New York "in trust and in fee for the Tonawanda Indians." This settlement effectually extinguished whatever preemption right the Odgen Land Co. ever had in and to the lands within this reservation.

The Tuscarora Reservation lies in Niagara County about 9 miles northeast of Niagara Falls, and contains 6,249 acres. The Tuscarora Indians having been adopted by the Iroquois League as one of the Six Nations, by deed dated March 30, 1808, the Seneca Nation granted 1 square mile (640 acres) to the Tuscarora Indians. (Liber 1, folio 56, Land Records of Niagara County.) It is reported that subsequently the Holland Land Co., assignee of Robert Morris, "ratified" this grant, and gave to the Tuscaroras 1,280 acres more, but no record of any paper title to this effect can be found. At any rate, the Tuscaroras occupy and claim these lands as a part of their present reserve, which are subject to the preemption right of the Ogden Land Co., (7 Stats., 560), although the Indians deny this, basing their claim on a decree of the State court in Buffalo, handed down in 1850. This suit resulted from an agreement with the Federal Government, January 15, 1838, under which the Six Nations were to remove west of the Mississippi River, and in anticipation of their removal the chiefs of the Tuscarora Tribe executed a deed to Thomas Ludlow Ogden and Joseph Fellows, predecessors [13] of the Ogden Land Co., conveying to said Ogden and Fellows, as owners of the preemptive right, the 1,920 acres last referred to. The deed was placed in the hands of Herman B. Potter, in escrow, pending the performance of certain conditions precedent to delivery. The expected removal failed to materialize and in 1849 Wm. B. Chew et al., chiefs of the tribe, insituted suit against Herman B.

Potter and Joseph Fellows (Thomas L. Ogden then being deceased), looking to a surrender and cancellation of the deed. A verdict in favor of the Indians was rendered and the deed canceled by decree of the court, which resulted only in placing the matter in statu quo, as far as the preemptive right of Ogden and Fellows was concerned. The execution of the deed was an admission of the existence of the preemptive right, and the contention of the Indians that the decree of the court canceling the deed also effectually extinguished the right of preemption in the Ogden people does not appear well founded. The records in the case are still on file in the county clerk's office at Buffalo.

About the year 1800 a delegation of Tuscarora Indians visited the governor of North Carolina and negotiated a sale of their lands in that State for approximately $15,000, which money was deposited with the United States in trust. In 1804 Congress authorized the Secretary of War to purchase with this money additional land for these Indians. With these funds 4,329 acres, lying to the south and east of the 1,920 acres already occupied by them, were purchased for the Tuscarora Indians. Title to these lands was taken by the Secretary of War in trust for the Indians, but subsequently (January 2, 1809) the lands were conveyed directly to the Tuscarora Tribe, who now own the fee. (Book "A," p.5, Niagara County clerk's office.)

The St. Regis Reservation contains 38,890 acres, of which 24,250 acres fall within the Dominion of Canada. The remaining 14,640 acres on the American side lie in Franklin County, N. Y., and were secured to these Indians by treaty with the State, in consideration for which they surrendered certain other lands claimed by them. The Ogden Land Co.'s claim never comprised any part of the lands within this reserve.

The Shinnecock Reservation, containing some 450 acres, is located on a neck of land running into Shinnecock Bay, Long Island. Southampton was an early colonial town, established in the seventeenth century, and the town trustees negotiated with "Shinnecock," chief of the tribe, for a sale of the lands. Tribal tradition has it that the chief sold out to the whites and skipped with the money. While this does not comport with accepted ideas of the honesty and integrity of aboriginal chiefs, yet it is a matter of record that the town trustees of Southampton in the early days gave a lease for a thousand years to the Shinnecock Indians covering some 3,600 acres, known as the Shinnecock Hills and Shinnecock Neck. Matters stood thus until about the middle of the nineteenth century, when the town had developed to such an extent that a more satisfactory arrangement was desired. Accordingly, in 1859 the State authorized the town trustees to negotiate with the Indians for a cession of their leasehold estate. An agreement was reached, under which the Indians surrendered the hills, in exchange for which they received in fee Shinnecock Neck. The agreement is recorded in volume 3 of the town records of Southampton, at page—.

The above covers all of the reservations in New York to be regarded as of any importance at this time, but in passing mention may be made of the Poosepatucks, of mixed Indian and negro descent, who did occupy a small reservation of about 50 acres also on Long Island, near the mouth of the Mastic River, being a part of the tract of 175 acres conveyed to the tribe by Col. William Smith, governor of the Territory, July 2, 1700, "to the intent sayd Indians, their children and posterryte may not want sufficient land to plant on forever." Also the Montauk Tribe who occupied Montauk Point, the northeastern

extremity of Long Island, which was included in a patent issued in 1686 by Governor Dongan to "the freeholders and inhabitants of the town of East Hampton." This grant was made subject to the Indian right of occupancy, but also carried "the perpetual and exclusive right to purchase same from the Indians." Within comparatively recent years the remnant of this tribe sold their title to this land to one Benson, and these Indians, as a tribe, no longer exist as such, having individually become absorbed in the body politic. Pharoh *v.* Benson (69 Miscl., N. Y.,241). These Indians also intermarried so largely in the early days with negroes that their nationality as "Indians" became extinct long ago.

The Cornplater Reservation in Pennsylvania lies just below the line between New York and the former State. The reservation originally comprised 1,500 acres "granted in fee" by Pennsylvania March 16, 1796 to Cornplanter and his heirs. Subsequently, in 1871, the State authorized the appointment of commissioners to divide these lands in severalty among "Cornplanter's descendants and other Seneca Indians." This was done and the land was divided and allotted to 93 Indians, without power, however, to sell to persons other than descendants of Cornplanter, or other Seneca Indians.

[14]These small reservations, used in common, afforded only a haven of refuge to possibly otherwise homeless persons and for all practical purposes may be eliminated from further consideration. The same might also be said of the Oil Spring Reservation, containing as it does, but 640 acres, retained by the Indians in the early days largely from sentimental reasons.

Conditions on the remaining reservations show a crying need for reform. Naturally one casts about for the reasons why these conditions should have so long been

permitted to continue. First among these we find the question of jurisdiction over these Indians, State and Federal. Much needless confusion exists, a pretty general impression prevailing that the State has exclusive jurisdiction. This seems to have arisen from two causes, first, because New York was one of the Thirteen Original Colonies and the "title" to the lands involved never was in the Federal Government, and secondly, because the State has exercised jurisdiction, while the Federal Government, to a large extent, has not. A brief examination of the fundamental principles involved should remove any doubt on this point.

A common cause united the colonists in a supreme effort for independence, and the successful termination of the Revolution, together with the attendant treaty of peace, vested full powers of jurisdiction, sovereignty, and government in the 13 original colonies. Dissension immediately arose to such an extent that 13 independent nations seemed imminent rather than one. The interlacing web represented by the Articles of Confederation was not sufficiently strong to weave the dissenting colonies into a satisfactory whole. The independent colonies had too much power and the central government too little. This is a matter of history, well established. By the adoption of the Federal Constitution the colonies ceded to the General Government certain well-defined powers, functions, and duties, among which we find the regulation of commerce with foreign nations, among the several States, and with the Indian tribes. (Constitution, Art. I, sec. 8).

After the adoption of the Federal Constitution in 1787 several of the colonies ceded to the Federal Government certain parts of the territory covered by their respective charters from the British Crown. This territory formed

the first land the actual title to which was recognized as being in the Federal Government. This area was greatly increased from time to time, as by the Louisiana purchase in 1803, the Floridas in 1819, the Gadsden purchase in 1853, the Alaska purchase in 1867, and others. This vast territory comprises what has since been known as "the public-land States," the title to which was recognized as being in the United States.

New York not having ceded to the Federal Government the lands within her present borders, the actual title is not in the Federal Government, and as to land not otherwise disposed of by the State the title still remains there. Were it not for the fact that we are here dealing with "an Indian problem" the Federal Government would have practically nothing to do with the so-called "reservations" in that State. Having joined with her sister States, however, in the adoption of the Constitution, New York is bound to recognize the powers formally ceded to the nation. One of these is the regulation of commerce with Indian tribes, which surely is broad enough to cover traffic in lands occupied or claimed by them. Again, the admission of power in Indian tribes to barter, without the consent of the Federal Government, such title as they may have to any lands within the geographical limits of the United States, is repugnant to the fundamental principles of sovereignty so essential to the preservation of a nation. This is true, even though the actual title is not in the Federal Government. (Johnson *v.* McIntosh, 8 Wheat., 543; Wooster *v.* Georgia, 6 Pet., 515; Cherokee Nation *v.* Georgia, 5 Pet., 1.) Congress at an early date fully recognized the necessity for this (Act Mar. 30, 1802; 2 Stats., 143, sec. 12.) Could we afford to admit the right of an Indian tribe to sell their land within our borders to a foreign country?

By acts of Congress and judicial construction the power of the Federal Government over questions dealing with Indians has grown infinitely stronger. Apparently this has been a product of necessity rather than any express delegation of authority to be found in the Federal Constitution. From time to time New York has enacted sundry laws pertaining to the Indians within her borders, has provided schools for their youth, appointed attorneys to protect their interests, and has delegated jurisdiction in some instances to her courts to entertain their complaints. No case has been found denying the right of the State so to do, or that the laws so enacted are unconstitutional. On the other hand, numerous cases could be cited, if necessary, upholding the validity of such laws, where they do not conflict with the Federal Constitution, treaties with Indian tribes, or congressional enactments. (New York *v.* Dibble, 21 How., 366.) In brief, the principle involved may be broadly stated, that all State laws beneficial to Indians will be upheld, while those of a detrimental nature will be scrutinized with greater care.

[15] In internal matters of this kind, wherever the Nation remains passive, then the State of necessity must become active. In truth, the Indians in New York occupy a somewhat peculiar status, in that they may be said to be wards of both the Nation and the State. Jurisdiction seems concurrent rather than exclusive, and in passing it may be said that the State has always been generous in dealing with these people. Judging from concrete results, the Federal Government has manifested but slight interest in the affairs of these Indians. Its greatest shortcoming has been by omission rather than by commission. The New York Indian problem should have

been history long since. One hundred and twenty-seven years have passed since the adoption of the Federal Constitution, and we find these people to a large extent in the same position they occupied in the early days, at least in so far as their land tenures are concerned. Apparently the State has waited for the Nation and the Nation for the State. Has it never occurred to either to cooperate?

Originally the Federal Government dealt with the Indian tribes as quasi, or defacto nations, by treaty. Later Congress deemed it incongruous to deal with these people by such formal means as treaties, which implied equality, and directed that thereafter their affairs would be regulated by legislation only. (Act March 3, 1871, 16 Stats., 566.) The power of Congress so to do has been fully recognized, even to the extent of abrogating by legislation the provisions of a prior treaty with an Indian tribe. (United States *v.* Kagama, 118 U. S., 375; Lone Wolf *v.* Hitchcock, 187 U. S., 553.) February 19, 1875 (18 Stats., 330), Congress passed an act to regulate leases by the Seneca Indians in New York. September 30, 1890 (26 Stats., 558), the prior act was amended in certain respects. The control of Congress over the subject matter was most strongly upheld in Ryan *v.* Knorr (19 Hun., 540), and Shongo *v.* Miller (45 A. D., 339). Need more be added to show jurisdiction in the Federal Government over the Indian tribes in New York? The one case of Fellows *v.* Blacksmith (19 Howard, 366), would be amply sufficient to prove this.

Congress having assured the Six Nations peaceful possession of their reservations (7 Stats., 44), and the Supreme Court having denied the State the right to tax their land (The New York Indians, 5 Wall., 761), the

hands of the State are effectually tied in so far as working out a feasible solution of the problem is concerned. We have just seen that prior treaties may be superseded by subsequent legislation, but this power rests solely with Congress. Certainly it does not exist in the State. Just when, in what manner, and to what extent this power is to be exercised, therefore, rests in the sound discretion of Congress. Presumably the power will be exercised only after full considerations of humanity and public policy.

It has heretofore been shown that the actual title—the fee—in the St. Regis and Onondaga Reservations is in the State, that of the Tonowanda Reservation is in the comptroller of the State, and as to the Shinnecock and 4,329 acres of the Tuscarora Reservation it is in the respective tribes. Aside from the locus of the actual title, however, we have also found that the Indians' right of possession is an indefeasible one which can not be disturbed without the sanction of the Federal Government. (Fellows *v.* Blacksmith and The New York Indians, supra.) As to the locus of the fee of the Allegany, Cattaraugus, and 1,920 acres of the Tuscarora Reservations, we are confronted with a more difficult problem, these lands being subject to the "claim" of the Ogden Land Co., so-called—a claim of such a peculiar nature that a short recourse to colonial history is again necessary.

By charters in 1628-29 James I, King of England, granted certain land in the new continent to the Plymouth Colony. March 12, 1664, Charles II likewise granted certain land to the Duke of York. Owing to the deficient geographical knowledge of the then new country, the descriptions in these grants were more of less vague, and in many cases overlapped.

Massachusetts succeeded to the title of the Plymouth Colony and shortly after the close of the Revolution a dispute arose between that State and New York over the ownership of certain territory aggregating upward of 6,000,000 acres located in the western part of the latter State. The controversy was first submitted to the Continental Congress and a court was appointed to hear and determine the cause. The matter was finally adjusted, however, without resort to the court, a convention for this purpose having been held at Hartford, Conn., December, 1786, New York being represented by 6 commissioners and Massachusetts 10. A compact or agreement was drawn and duly executed December 16, 1786. By this compact New York retained the right of government, sovereignty, and jurisdiction over the disputed territory, but ceded to Massachusetts the right of preemption of the soil from the native Indians, coupled with the power to sell or assign such right.

Massachusetts proceeded promptly to dispose of its title and in April, 1788, Oliver Phelps and Nathaniel Gorman negotiated with that State for the purchase of the entire area for $1,000,000, payable within three years in public paper of the State, a kind of scrip which was then greatly depreciated. Phelps and Gorman failed to [16] comply in full with their agreement and subsequently Massachusetts brought suit to recover title. A compromise agreement was effected, however, under which Phelps and Gorman obtained a clear title to about 1,900,000 acres of the original area, the remainder being again relinquished to the State. March 8, 1791, Massachusetts conveyed to Robert Morris for $225,000 the land which Phelps and Gorman had failed to acquire. Morris retained 500,000 acres of this land, which

thereafter became known as "The Morris Reserve," and by four separate deeds in 1792-93, conveyed the remainder, aggregating 3,600,000 acres to a company of Amsterdam capitalists, among whom Wilhelm Willnick was the largest owner. These conveyances from Morris were coupled with an agreement on his part to extinguish the Indian title, which he promptly endeavored to do and which finally resulted in the agreement or treaty of Big Tree, September 15, 1797 (7 Stats., 601).

The Amsterdam capitalists subsequently became known as the Holland Land Co., and in 1810 the company conveyed to David A. Ogden certain described lands, embracing an area within which will be found the present Allegany, Cattaraugus, and Tuscarora Reservations. Ogden later associated other capitalists with him and the combination became known as the Ogden Land Co., title to all lands acquired being taken in the name of certain members, in trust for the company, which, however, was not incorporated. Later a trust deed was executed under which the holdings of the company were divided into 20 shares of no specified value. A dispute having arisen among the shareholders, suit was instituted, in which a part of the joint owners were plaintiffs, the remainder being defendants. December 10, 1883, a decree was entered in the Supreme Court of Queens County, N. Y., designating Charles E. Appleby, of New York, a trustee, and William D. Waddington as co-trustee of the concern. Waddington died prior to 1888, leaving Charles E. Appleby sole surviving trustee of the company, who served until the latter part of 1913, when he also died. Who now represents the company in an official or legal capacity is not known, but in 1894 the owners of these 20 shares were reported to be:

	Shares.
Estate of Joshua Waddington	4
Estate of Peter S. Schermerhorn	1
Estate of Thomas Ludlow Ogden	2
Estate of Louisa Troup	1
Estate of Abraham Ogden	1
Estate of Robert L. Tillotson	1
Estate of Duncan P. Campbell	1
Estate of Charlotte Brinckerhoff	1
Estate of James S. Wadsworth	1 1/2
Estate of Ogden Murray	0 1/2
Estate of Benjamin W. Rogers	2
Estate of Robert Bayard	1
Charles E. Appleby	1
Estate of Shaw and Wilson, now held by Bank of England	2
Total	20

The nature and extent of the claim of the Ogden Land Co. still remains to be considered, however. This claim has received various designations, having grown, in the estimation of the company, from an original right of preemption to that of absolute fee. Many theories have been advanced as to its exact nature and the decisions of the State courts before whom this matter has been brought are not conducive to a clear understanding of the case. Much fruitless labor seems to have been expended in an effort to determine the locus of the fee, presumaby due to the old common-law fiction that necessarily the fee must be in some one. That this is merely a fiction, however, is apparent from a moment's consideration. In whom is the fee to an uninhabited and undiscovered island in the Pacific Ocean? On discovery does the fee arise and hail the discoverer as a deliverer?

Ogden *v.* Lee (6 Hill, 546) would indicate that the fee to these lands is in the Seneca Nation, subject to the preemption right ceded to Massachusetts by the State of New York. Fellows *v.* Lee (5 Den., 628) affirmed the decision of the lower court on the ground that the Indian title to land is an absolute fee, and that the preemption right ceded to Massachusetts was simply the right to acquire by purchase whenever the Indians choose to sell. In Seneca Nation *v.* Christie (126 A. D., 322) and Seneca Nation *v.* Appleby (127 A. D., 770) the preemption right to the Ogden Land Co. seems to have matured into what has variously been styled a "fee subject to the Indian right of occupancy," "qualified fee," "naked fee," "ultimate fee," etc. But little satisfaction is obtained from examining these various decisions with a view of deter- [17] mining just where the fee in these lands lies. Neither does a process of elimination produce a more satisfactory result. Necessarily four parties are to be considered in the matter, the Indians, the Nation, the State, and the Ogden Land Co. The doctrine of discovery, as laid down in Johnson *v.* McIntosh (supra), does not recognize an absolute fee in an Indian tribe, their right being that of possession only. We have heretofore seen that the absolute fee was never placed in the Federal Government; nor is it in the State of New York, the latter having ceded all right and title, except that of sovereignty and jurisdiction, to Massachusetts. Massachusetts parted with whatever title it acquired, and we find the present claimants to be the Ogden Land Co. It is well, therefore, to examine with greater care the compact between Massachusetts and New York. The second and tenth articles read:

"Secondly. The State of New York doth hereby cede, grant, release, and confirm to the said Commonwealth of Massachusetts, and to the use of the Commonwealth,

their grantees, and the heirs and assigns of such grantees forever, the right of preemption of the soil from the native Indians, and all their estate, right, title, and property (the right and title of government, sovereignty, and jurisdiction excepted) which the State of New York hath of, in, or to (description of land involved follows).

"Tenthly. The Commonwealth of Massachusetts may grant the right of preemption of the whole or any part of the said lands and territories to any person or persons who by virtue of such grant shall have good right to extinguish by purchase the claims of the native Indians: *Providing, however,* That no purchase from the native Indians by any such grantee or grantees shall be valid unless the same shall be made in the presence of and approved by a superintendent to be appointed for such purpose by the Commonwealth of Massachusetts, and having no interest in such purchase, and unless such purchase shall be confirmed by the Commonwealth of Massachusetts."

In construing the foregoing in Ogden *v.* Lee (supra), the court said:

"In the adjustment of the conflicting claims of the States of Massachusetts and New York to the tract of country which includes the Cattaraugus Reservation, Massachusetts ceded all her right to 'the government, sovereignty, and jurisdiction of the disputed territory,' and New York ceded 'the right of preemption of the soil from the native Indians.' The words which follow—'and all other the estate, right, title, and property which the State of New York hath'—were not intended to enlarge the grant into an unqualified fee. It is impossible to suppose the parties meant to disregard and set aside the Indian title, which they had but the moment before fully recognized by contracting for 'the right of preemption of the soil from the native Indians.' This point is rendered

still more clear by a subsequent clause in the deed of cession. By the tenth article the Commonwealth of Massachusetts was authorized to grant 'the right of preemption,' and nothing more; and her grantees were only to acquire 'good right to extinguish by purchase the claim of the native Indians.' * * * Their right (the Indians') is as perfect now as it was when the first European landed on this continent, with the single exception that they can not sell without the consent of the Government. The right of occupancy to them and their heirs forever remains wholly unimpaired. They are not tenants of the State, nor of its grantees. They hold under their own original title. The plaintiffs have acquired nothing but the right to purchase whenever the owners may choose to sell."

The doctrine laid down in the foregoing appears sound. In any event, by eliminating the State and Federal Governments, in neither of whom it seems the fee exists, and placing in juxtaposition the "title" of the Indians against that of the Ogden Land Co., we instantly recognize the stronger—the Indians. The courts of both the Nation and the State have repeatedly denied the right of the assignees of Massachusetts in any manner to interfere with the right of the Indians to the peaceful and continued possession of their soil. We dismiss, therefore, from further consideration any attempt to determine the locus of the fee, and admit, for all intents and purposes, that it lies dormant and will remain dormant until present conditions are changed. Some workable plan under which these conditions may be ameliorated is of far greater import either to the Nation, the State, or the Indians, than any fruitless pursuit of the locus of the fee.

The Indians deny that the Ogden Land Co. has any valid claim to their lands, but the convention between Massachusetts and New York involved upward of

6,000,000 acres and the validity of the original grant to Massachusetts, and the subsequent sale by that State has been too long recognized and upheld by a long line of court decisions to justify any attempt to repudiate the transaction at this late date. The title to millions and millions of dollars worth of property in the western part of New York is based primarily on the convention between the two States. It is not seen how the courts could repudiate it. In fact, it appears to have been confirmed by the National Government. (Seneca Nation *v.* Christie, 162 U.S., 284-285.)

[18] Various attempts have been made from time to time to adjust the claims of the Ogden Land Co., but without success. The act of August 15, 1894 (28 Stats., 301), directed the Secretary of the Interior to investigate the claim of the company, which investigation was had and report submitted to the Fifty-third Congress, third session. (Senate Executive Document No. 52.) Later, by act of March 2, 1895 (28 Stats., 887), the department was authorized to negotiate with the Ogden Land Co. for the purchase of its claim, which investigation was also had and report submitted to Congress under date of February 20, 1897. (House Document No. 309, 54th Cong.) Later, bills were introduced looking to a settlement of the matter (H. R. 12270, 53d Cong., and H. R. 7262, 54th Congress), both of which failed of enactment.

Matters thus stood until about 1905 when the Seneca Indians instituted suit against Charles K. Appleby, surviving trustee, for the purpose of testing the extent and validity of the Ogden Land Co.'s claim. This resulted in a decision by the Supreme Court of the State of New York virtually recognizing the ultimate fee as being in the Ogden Land Co., with right of possession in the

Indians. As to the title of the Ogden Land Co., the decision of the court is not of great import; but one suggestion made by the court in its decision is of great interest at this time:

"The affirmance of the judgment (of the lower court) does not establish the proposition that if the plaintiff becomes disintegrated that the defendant's title will vest in possession at once. Allotment among the individual Indians by the plaintiff has been permitted for a considerable period by the National Government. Inheritance is allowed in accordance with the statutes of the State of New York, and conveyances amongst the Indians are also allowed. It may well be held that even though the nation in its tribal capacity should be dissolved, if the individual Indian holds his land by virtue of this recognized method of allotment, that the occupancy will continue to his most remote descendant."

In effect, this would intimate that the courts may find room to hold that allotment of these lands among the Indians will not result in a disintegration of the tribe, or a vesting of the right of the Ogden Land Co., if any such right exists. In other words, the lands may be allotted to individual members of the tribe and still remain subject to the claim or right of the Ogden Land Co. This seems to be the basis on which recent proposed legislation by the National Government is founded (H. R. 18735, 63d Cong., 2d sess.). Whether that contention is sound, remains yet to be seen. In either event, no matter in what form this question is adjusted, the prospect of its ultimately being thrown into the courts for decision is exceedingly strong. The representatives of the Ogden Land Co., when last approached, placed what was regarded as a fictitious value on their claim. If any compulsory method of settlement is invoked, as by condemnation, it would necessitate the institution of

proceedings, with the Government acting as party plaintiff. Doubtless if the lands are allotted subject to the right of the Ogden land Co., representatives of that company would promptly institute suit to test the power of the Federal Government so to do, or the validity of the allotment so made; basing their claim on the theory that the "ultimate fee" rests in them, and the dissolution of the tribal organization by allotment vests full title in the company.

However, it is not seen how the power of the Federal Government to enforce a division of these lands among the tribal membership can be denied. If whatever title the tribe has to specified areas within these reservations is placed by authority of Congress in individual members, who would deny the power of Congress so to do? If such action is had and the Ogden Land Co. or its assignees institute proceedings to test the right of the individual Indians, necessarily the Government must stand behind the Indian to defend his title.

The Indians not being satisfied with the decision found in The Seneca Indians *v.* Appleby (127 A. D., 770), the case was appealed, and the appellate court of New York dismissed the proceedings on the ground that the Indians were without power to sue and that the lower court was without power to try and determine the cause (196 N. Y., 318). This virtually nullified the decision of the lower courts and leaves the matter still at large. After examining the numerous decisions by the State courts relating to this matter, it is with great satisfaction one reviews the last case before the appellate court of that State and finds therein the following:

"Nor is it at all a subject of regret that we find that the action can not be maintained. On the contrary, we think it eminently wise of the legislature not to have authorized a determination now of questions which may

not arise until the remote future, and whose determination, when they arise, may be seriously affected by considerations we can not now foresee. * * * The respondent contends that the rights of the Indians will not survive the dissolution of the nation or tribal existence, while the learned judge of the appellate division is of opinion that the rights continue as long as the lands are actually occupied by Indians of the tribe, whether the tribe as an entity [19] continues to exist or not. * * * The question had much better be left till the nation or tribe becomes disintegrated, when the courts of that day will doubtless be competent to deal with it, as well as with the whole question of what rights, if any, the defendant or his successors in interest have in the lands embraced in these reservations."

Did the framers of the compact between Massachusetts and New York ever dream of the future difficulties being stored up when they conceived the plan of divorcing the right of preemption from that of sovereignty?

The claim of the Ogden Land Co. has stood continuously as an effective stumbling-block to a ready solution of "the New York Indian problem." The company has not heretofore been disposed to place a reasonable value on its claim, and the payment of an exorbitant price should not be considered, in view of the doubtful nature of that claim. Within recent years many of the Indians have manifested a strong tendency to object to any distrubance of that claim. After the decision of the appellate court, holding that they were without capacity to sue, the tribe applied to the State legislature and by that body was granted the requisite authority. The matter was dropped at that point, however, as the Indians began to fear that any

disturbance of the claim would result in a speedy allotment in severalty, a dissolution of their tribal organizations, and the assumption of full responsibilities of citizenship. In other words, the claim has acted as a blanket to protect them from these ultimate ends, which they do not appear to desire. As matters now stand they enjoy the full benefits accorded other residents of the State, such as adequate school facilities, excellent highways constructed within their reservations at the expense of the State, yet at the same time their property is exempt from taxation and the Indians are not bound by financial obligations arising under contracts. From a personal or selfish standpoint, therefore, why should they desire a change?

At its own expense the State maintains 33 schools exclusively for Indians and employs 37 teachers therein. If the State is denied the right to tax their lands, should it be expected to support, protect, and educate the Indians? Has the nation been altogether fair to the State in this matter? Should not this be a burden upon the nation rather than the State? If the nation denies financial responsibility, should the State be denied the right to tax or to take such other steps as may be necessary to solve the problem?

By invitation, from time to time, the State legislative assembly has invited these people to divide their lands in severalty, and the courts of the State have respected, as fully as possible, the division so made. Beyond this the State could not go, as the Nation has guaranteed these people peaceful possession of their soil. The State has been without power to compel a division of their lands, as this power is peculiarly vested in the Nation.

March 21, 1888, the State legislative assembly appointed a committee of five to investigate the Indian problem in New York, and the report of that committee,

with extensive exhibits, covering some 410 pages of printed matter, was presented to the assembly under date of January 31, 1889. Much valuable data can be gathered from that report, and the specific recommendations made by that committee are not without interest even at this time. They read:

1. That a compulsory attendance school law be enacted.

2. That the legislature request the General Government to take action to extinguish the claim of the Ogden Co. to the lands of the Senecas and that portion of the Tuscaroras covered by it.

3. That the lands of the several reservations be allotted in severalty among the several members of the tribe, with suitable restrictions as to alienation to whites, and protection from judgments and other debts; but such division not to go into effect as to lands affected by the Ogden Co.'s claim until that claim be removed. This allotment in severalty ought not to be limited to a division of the possession of the land, but should comprise a radical uprooting of the whole tribal system, giving to each individual absolute ownership of his share of the land in fee.

4. The repeal of all existing laws relating to the Indians of the State, excepting those prohibiting sale of liquors to them and intrusion upon their lands, the extension of the laws of the State over them, and their absorption into citizenship.

The State subsequently enacted and has with a reasonable measure of success enforced a compulsory attendance school law, but as to the other recommendations they stand to-day practically as when made 26 years ago. How much longer must the State await the pleasure of the Nation in offering a solution of the problem? That present conditions should be

permitted to continue indefinitely on these reservations would be a sham upon the Nation and a disgrace to the State. In a majority of these tribes the infusion of white blood has been so great that out of an "Indian" population of over 5,000 in the State one will find scarcely a single full blood, less than 500 half bloods, and a great number with so much white blood that only the closest scru- [20] tiny of a keen observer will disclose any Indian characteristics. The remnants of the further tribes on Long Island have intermarried so largely with negroes that their present descendants are more nearly negro than Indian. All of these people deserve but scant sympathy, therefore, as "Indians," although any adjustment of their affairs should be based on sound principles of justice and humanity. A large percentage of them have reached a comparatively advanced stage of education and civilization along certain lines. Many of them are progressive, shrewd, keen, business men with large land holdings, fine homes, excellent barns, up-to-date farming implements, and in a number of cases even automobiles. On some of these reservations marriage to a large extent consists of but cohabitation and divorce but separation at pleasure. In the midst of thriving communities, in some cases adjacent to large cities, the continuance of such conditions is abhorrent to the finer sensibilities of civilized mankind. The cause should have been removed long since and no doubt would have been had the power existed in the State to force an effective solution of the problem.

Nothing in the foregoing should be construed as intending to imply that these reservations are hotbeds of iniquity or corruption. Among these people will be found many upright, honorable men and women, who are law-abiding, self-respecting inhabitiants, but the lax enforcement of the law on these reservations allows the unruly element full license to do pretty much what they

please. Being powerless to dissolve the tribal organizations and to compel a division of the lands among the Indians, the State could only abide in patience the time when either the Nation would remove the obstacles or the Indians voluntarily agree to a relinquishment of their title. Thus the tribes to a large extent have been left to themselves, both by the nation and the State, in so far as police supervision and internal government is concerned. Doubtless the State has been influenced in its action by the doubtful question of jurisdiction and the superior power of the Federal Government over the subject matter.

One of the most serious difficulties, however, presented in connection with a solution of this matter lies in the fact that to all intents and purposes these reservations were "allotted" years ago. The Indians under their tribal government have divided the lands among themselves; valuable improvements have been erected, and transfers have been made by sale, purchase, gift, or otherwise, until the present claimants are confirmed in their respective holdings by recognition of the tribal officers, by the tribal membership at large, and even by the State courts, who have upheld such transactions. Shrewd members of the various tribes in many cases have acquired land holdings many times in excess of the number of acres to which they would be entitled under a present pro rata division. Naturally, to a man, such owners are opposed to any settlement which would not recognize and confirm their present possession, the title to which they could in many cases prove by inheritance or purchase for valuable considerations. Cases may be found, of course, where the acquisition would not bear the light of close investigation, but in the majority of cases it will be found that rightful inheritance or the payment of adequate consideration has been the basis of

the "title" over and above the acreage to which the present owner would be entitled under a pro rata division.

Those members of the tribes who possess no land naturally are in favor of a division of the tribal property. If their right as a member of one of these tribes is worth anything in dollars and cents they want it, and the faction of the tribes favoring a division is composed largely of this class. A few, having in their possession only the approximate number of acres to which they would be entitled in case of a pro rata allotment, or who have a family with sufficient members to absorb the entire area now occupied, would be very glad to receive ultimate title with power to convey, to outsiders, as on practically every reservation such power, coupled with their present title, would practically double the per acre value of their lands which, even at this date, is by no means inconsiderable.

The lands of the St. Regis Reservation are fertile farming lands and many of these Indians are expert dairymen. The Tuscarora Reservation lies within one of the most fertile parts of the State of New York and the lands there are very valuable both agricultural and fruit-raising purposes. The Shinnecock Reservation on Long Island is not of an exceedingly high value for agricultural purposes, yet these lands are so beautifully situated on Shinnecock Bay—a small arm of the Atlantic Ocean—that to-day they have an actual value of approximately $2,000 per acre for building-site purposes. Many wealthy people from New York City and elsewhere have built fine summer houses in Southampton, which is but 2 miles distant from this reservation, within which unimproved land is worth about $5,000 per acre at this time. On the Onondaga, Tonawanda, Allegany and Cattaraugus Reservations the valley land are very fertile,

and have been improved and cultivated for many years past. Any timber of commercial value on the hills within these reservations has been removed [21] long since and these lands are now mainly valuable for grazing purposes. The average value of the lands within these reservations will closely approximate $60 per acre.

Before any attempt is made to suggest an adjustment of present landholdings an accurate survey of each reservation should be made, the present owner of each acre ascertained, the manner in which title was acquired looked into, and the general conditions studied with a view of offering the most equitable plan, both to the present holders and the tribe at large. In brief, each reservation should be made the subject of a special study and such measures taken as would best fit conditions on that particular reservation. Any broadside legislation applying indiscriminately to all these reservations and designed to affect present landholdings, aside from meeting stenuous opposition, might produce disaster. At present these people are contented, fairly prosperous, and, in a few cases, wealthy to a limited extent. The greatest present need on these reservations is proper police supervision and the enforcement of the law. The peace officers of the State have been chary about enforcing State laws, moved in part by the doubtful question of jurisdiction and possibly more so by the uncertain outcome of any attempt to collect their usual fees.

Each reservation should be provided with an officer with full powers to see that the law is obeyed. The power now placed in the hands of the tribal organizations should be promptly curtailed, as, in the past, this power has too frequently been used for selfish purposes or in other cases has not been exercised to compel order and obedience to the laws. In the past the State has been

burdened with practically all expense connected with whatever enforcement of the law has been compelled, all local educational facilities furnished, and yet its hands have been effectually tied in so far as taxation of the property of these people is concerned. The Nation should either untie the knot by turning the entire matter over absolutely to the State or else assume full jurisdiction and effectually enforce it.

In view of the superior jurisdiction and power of the Federal Government over the subject matter, its broader experience in dealing with Indian problems, the urgent need for some remedial legislation and the inability of the State to offer or force a feasible solution, it is suggested that the matter be placed before Congress with recommendations that legislation to accomplish the following results be speedily enacted.

1. Promptly curtail the power and authority now lodged in the respective tribal organizations.

2. Place one or more representatives of the Federal Government on each reservation, with full powers to maintain order and enforce obedience to the laws, such officers to be subordinate to the special agent or other officer in charge of the New York Indians.

3. Declare the Indian reservations in the State of New York to be "Indian country" within the meaning of the Federal statutes prohibiting the introduction of intoxicants into such country.

4. Provide for an accurate survey of the lands within each reservation, so as to determine the present owner or claimant of each acre therein, the time when and manner in which such possession was acquired, and the equitable right of such owner thereto, which should be coupled with an investigation as to present membership of the tribes owning lands and those who are without such means.

Possession of information suggested in the preceding paragraph should enable specific recommendations to be made with a view of suggesting an equitable adjustment of the New York Indian problem

Appreciating fully the need in the Indian Office of a ready reference to at least some of the many court decisions, congressional documents, and miscellaneous papers relating to the New York Indians, an index of the character indicated has been prepared and attached hereto as an appendix.

Respectfully,

JOHN R. T. REEVES.

APPENDIX.

THE NEW YORK INDIANS.

TREATIES.

October 22, 1784 (7 Stats., 15), with the Six Nations.
January 9, 1789 (7 Stats., 33), with the Six Nations.
November 11, 1794 (7 Stats., 44), with the Six Nations.
December 2, 1794 (7 Stats., 47), Oneidas, Tuscaroras, and Stockbridges.
May 31, 1796 (7 Stats., 55), Seven Nations of Canada.
March 29, 1797 (7 Stats., 61), Mohawks.

APPENDIX F(4)

Memorial of the Council of The Seneca Nation of Indians

41ST CONGRESS, 3d Session. } SENATE { MIS. DOC. No. 83.

MEMORIAL

OF THE

COUNCIL OF THE SENECA NATION OF INDIANS.

REMONSTRATING

Against the sale of any portion of the Allegany Reservation.

FEBRUARY 27, 1871.—Referred to the Committee on Indian Affairs and ordered to be printed.

To the Honorable the Senate and House of Representatives of the United States in Congress assembled:

Whereas a report has come to the authorities of the Seneca Nation of Indians that white settlers residing upon the Allegany Reservation have petitioned in the shape of a bill to the legislature of the State of New York to pass a resolution requesting Senators and Representatives of the State of New York in Congress to procure the passage of some act, or the formation of a treaty with the Seneca Nation of Indians, whereby a title may be obtained to the whole or a portion of the

Allegany Reservation, or such relief secured for white settlers as the circumstances demand, and that such resolution has been passed by the legislature of the State of New York and the same introduced to the Senate of the United States; and whereas this action on the part of the white settlers residing on the Allegany Reservation has been done by and without the knowledge of the Seneca Nation; and whereas the Seneca Nation have not and do not desire the sale of any portion of the lands they now occupy; and that the Seneca Nation of Indians, yet considering themselves the wards of the United States; now, therefore,

Resolved by the council of the Seneca Nation in council assembled, That we solemnly and earnestly protest against the recognition and passage of such an act as the white settlers on the Allegany Reservation demand; the council of the Seneca Nation hope and pray that their rights and interests may be protected from the avarice and encroachments of the white settlers residing on lands occupied and belonging to the Seneca Nation of Indians in the State of New York.

Resolved by the council of the Seneca Nation, That they earnestly request and pray that their great father, the President of the United States, will use his utmost influence in Congress in averting that which would prove detrimental, and jeopardize the interest of the Seneca Nation of Indians.

Your petitioners, as in duty bound, will ever pray.

Done in council at Red House, on the Allegany Indian Reservation, February 14, 1871.

WILLIAM KROUSE,
President of the Seneca Nation of Indians.

T. F. JAMESON, *Clerk, &c.*

APPENDIX F(5)

House of Representatives Report No. 478

HOUSE OF REPRESENTATIVES.

43D CONGRESS, *1st Session.* } { REPORT No. 478.

SENECA INDIANS OF NEW YORK.

APRIL 20, 1874—Recommitted to the Committee on Indian Affairs and ordered to be printed.

Mr. B. W. HARRIS, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany bill H. R. 3080.]

The Committee on Indian Affairs, to whom was referred House bill No. 1053, *submit their report as follows:*

The Seneca Nation of New York Indians now occupy the Cattaraugus and Allegany reservations in Western New York. The former of these reservations contains about 23,000 and the latter about 30,000 acres. These lands are all which is left to them of them former extensive territory. They hold them under the treaty of November 11, 1794, which declares that "the United States will never claim the same nor disturb them or either of the Six Nations, nor their Indian friends residing thereon and united with them, in the free use and enjoyment thereof, *but the said reservation shall remain theirs* until they choose to sell the same," &c.

No treaties with Indians which attempt to provide against the encroachments of civilization, or to secure them in undisturbed possession of their lands, can long be maintained according to the strict letter, even in the remote mountain-regions of the West, much less in the central part of a great, prosperous, and populous State like New York.

It was impossible that these small reservations, entirely surrounded as they are with thriving and increasing manufacturing and agricultural communities, should escape the fate common to all other reservations of the kind.

With the growth of the country, commerce and trade demanded the construction of new avenues of communication. Long lines of railroad have been constructed from the east to the west; and as no obstacles in nature are found sufficient in our day to block their way, it is not strange that they have paid little heed to Indian reservations or treaty-stipulations.

Accordingly we find that the Erie Railroad has crossed the reservation, and has erected depots, machine shops, and other buildings and structures required for the conduct of its large business upon the Indian lands. The Atlantic and Great Western Railroad, connecting itself with the Erie Railroad, has extended its line through the whole length of this narrow reservation. At the junction of these roads, a thriving and important village has sprung up, known by the name of Salamanca, which now contains, besides buildings used for railroad purposes, numerous stores, warehouses, and private dwellings, as well as churches, [2] school-houses, and other public buildings, and has a laborious and industrious population of nearly three thousand people.

The Allegany reservation is about forty miles in length, extending on both sides of the Allegany River, and is hardly more than one mile in width. The Atlantic and Great Western Railroad going west from Salamanca keeps by the side of the river, and thus in the center of the reservation. It was inevitable that the population residing outside of the reservation, on each side of it, would seek and demand accommodation by this railroad. The result has been that railroad stations have been established upon the reservation along the line of said road at Carrolton, Great Valley, Red House, and Vandalia, at each of which places small settlements have been made, which will doubtless increase in the future.

But although these railroads have been built across the Indian lands in violation of the letter of treaties made with the Seneca Nation, and can be said now to have no lawful right there, yet they have not been so constructed without the consent of the Seneca Nation, nor without just compensation being made; nor have the settlers and villagers gone upon the Indian lands against the will, or without the consent, of the Indians, or with any intention or desire to violate their rights or privileges. So far as has appeared, the railroad-companies have dealt fairly, taking from the said Seneca Nation leases of the lands they occupy, paying full compensation for the rights secured. The settlers in said villages have also dealt honorably, and are all tenants of the Seneca Nation, or of individual Indians, paying just annual rent for their lands. It does not appear that the Indians are dissatisfied with the arrangement, or that they have just cause for complaint of the tenants.

The only title which the Indian can give is a lease-hold title. They have only the right of possession. The pre-emptive right, or the right to extinguish the Indian title

by purchase or otherwise, in this case belonged originally to the State of Massachusetts, but has passed by several conveyances to the trustees of the Ogden Land Company, who now hold it.

But the Indian right to occupy is a right forever, or so long as the nation may last; and it would seem that they should have the legal right and power to make their possession profitable and useful to them by leasing it to tenants, if they see fit.

But under the laws of the United States and the treaties made with the Seneca Nation, the Indians are incapable of, and prohibited from, making valid contracts concerning the use and occupation of their lands. The law now in force is as follows: "No purchase, grant, lease, or other conveyance of land, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or in equity, unless the same be made by treaty or convention, entered into pursuant to the Constitution. (Stat. at Large, vol. 4, p. 730.)

Heavy penalties are also provided against the violation of its provisions.

Notwithstanding such is the law, neither the railroads nor settlers are trespassers in spirit or purpose, however much they may be technically so; for, until recently, they acted under laws enacted by the State of New York, which were passed and intended to confirm and authorize leases made by white men with said Seneca Nation of Indians. They relied upon the laws so enacted, and in good faith took leases of land from said nation, and from individual Indians holding under the nation, and have erected thereon not only houses more or less costly and taste-[3] ful, but expensive buildings for trade and manufactures, school-houses, churches, and other buildings, and have laid out a comely town.

The Indians do not desire that these villages should be removed or broken up, or that these leases should be canceled; but, on the other hand, they profess to be willing to carry out all their leases according to their terms; and if they object to a law confirming them, or authorizing new ones to be made, it is because, being simple in their ideas of individual property, they do not appreciate the importance which a white man attaches to having his contract not only legal but capable of being enforced by law.

The supreme court of New York and the Supreme Court of the United States have decided that the legislature of New York has no jurisdiction over the subject, and can give no force or validity to any leases of land within said reservation, nor give any authority to such in any way. The result is that no lease heretofore made by said nation or individual Indian, or any which they can hereafter make, is or can "be of any validity in law or in equity."

The value of improvements made upon land in Salamanca and the other villages by the white settlers is estimated at $3,000,000.

Under this state of the case, the residents in these villages have no remedy whatever against wrong-doers and trespassers. They can neither collect rents nor expel delinquent tenants. They are, moreover, exposed to the danger of being removed, with entire loss of their property, whenever any designing person shall incite the Indians to demand a strict enforcement of their treaty-rights.

Their only dependence now is in the well-known and long-acknowledged high sense of honor of the Seneca Indians.

The committee feel that such a state of things ought not longer to be permitted to exist, and that it is just and right that Congress should ratify and confirm the free and voluntary contracts of their Indian wards, made in good faith and for a sufficient consideration. The committee do not deem it just or wise, even if Congress may have the legal right, to violate or abridge in any way the right of the Indian to the free use and enjoyment of the reservations as set forth in the treaty of 1794, and they therefore reject all the provisions of the bill referred to them except those which relate to existing leases and leases hereafter to be made. They think it just and safe to give them power to lease their lands if they choose, and, having done so, the law should give validity to their acts.

We annex to the report the petitions and remonstrances filed in the case.

Your committee report the accompanying bill as a substitute for House bill No. 1053, and recommend its passage.

We, the undersigned, citizens of the United States and occupants of land in the town of Salamanca, on the Allegany Indian reservation in the State of New York, respectfully but earnestly pray Congress to pass the bill for which reference is made in the resolutions hereto annexed.

[Signed by John J. O'Donnell and 799 others.]

Preamble and resolutions adopted at a citizens' meeting held at Flint's Hall, Salamanca, February 13, 1874—*H. O. Wait, president; O. B. Seimar, secretary.*

Whereas, by the junction of the Atlantic and Great Western Railroad with the Erie Railroad at Salamanca, on the Allegany Indian reservation, necessary repair and machine shops and transfer freight houses to successfully operate said roads had to be [4] freight received from one road to the other and to carry on said shops; and that by the employment of persons sufficient for said railroad-purposes at said place other pursuits, as a natural consequence thereof, necessarily followed, to meet the demands of the laborers thus employed and the requirements of the public;

And whereas the Indians, both individually and by their government, represented by their president and council, made and granted leases of such lands upon reasonable terms for a yearly compensation, to be occupied by private residences, business-houses, manufacturing-shops, water-powers for mills and necessary buildings, railroad-depots, repair and machine shops, and other buildings necessarily connected with railroads, and the legislature of the State of York authorized and sanctioned such occupancy by enacting a statute-law confirming the same;

And whereas, by inducements thus held out and sanctioned, the settlement upon said reservation-lands in said town continued to increase from year to year until at present more than three thousand people have become occupants thereof, and capital invested to the amount of more than three million dollars;

And whereas, after such investment and settling, induced as aforesaid, under the protection and authority of the government of the Seneca Nation of Indians and the State of New York, the courts, whose mandates all are bound to obey, have determined and decided that our money so invested and property thus accumulated is without authority of law and void, and the leases are only evidence of our being trespassers on said lands, and our occupancy is at the mere mercy of the Indians, whom the courts stand ready to aid, whenever invoked, to compel us to relinquish all of said property and vacate the possession thereof; and have also held and decided that Congress alone possesses the power to afford any relief: Therefore,

Be it resolved, That the Congress of the United States be, and hereby is, requested, as the only remedy for all our existing evils, to pass the bill now pending before that body, entitled "An act to authorize the Cattaraugus and Allegany Indians in the State of New York to lease lands, confirm leases, and quiet titles to their lands."

And be it further resolved, That the Senators and Members of this State be, and hereby are, specially requested to exert their influence in our behalf to press the aforesaid bill to an immediate passage.

And be it further resolved, That our committee who have this matter in charge be, and hereby are, requested to persevere in the great work before them until it shall be brought to a successful conclusion.

And be it further resolved, That a copy of these preambles and resolutions, together with the petition to Congress this evening signed and adopted, be forwarded to the Congress of the United States, and that a copy thereof be furnished the press for publication, and also a copy be annexed and forwarded with said petition.

To the Senate and House of Representatives of the United States of America in Congress assembled:

We, the undersigned, members of the Seneca Nation of Indians residing on the Allegany reservation, and the Cornplanter reserve, Warren County, Pa., respectfully represent that we are the descendants and representatives of a once powerful and numerous tribe of the aboriginal inhabitants of an extensive territory; that they are informed that a bill is now pending before your honorable body providing a subdivision and allotment of lands be made on the Allegany and Cattaraugus reservations in the State of New York, among the Senecas, and for the legalizing of leases of lands in the town of Salamanca, which, among other things, we would most respectfully state that we are in favor of having allotment of land to us. It would certainly be beneficial to our nation as a people. At present we are living in common, which show a strong evidence, more tendency, neglecting agricultural pursuits, or making any improvement. If each of us, instead, had his parcel of land to occupy, it would encourage us to labor and become independent. If our Great Father, the President of the United States, will provide for his children in this way, they will be satisfied.

That the Society of Friends of Philadelphia, Pa., earnestly requested us to present our prayer to the Congress of the United States to urge for passage of the bill in relation to the allotment of lands.

Dated February 2, 1874.

[Signed by John Jacobs Square and thirty-six others.]

To the Congress of the United States:

Your petitioners, the officers and members of the national council of the Seneca Nation of Indians, would respectfully represent that we have been informed that a bill has been introduced into the House of Representatives of your honorable body, which provides in [5] some manner for the sale of a part or the whole of the small remnant of land belonging to us and our people; and that we, as the representatives of the New York Indians residing upon the Cattaraugus and Allegany Indian reservations, desire to protest in the most solemn and emphatic manner against any legislation affecting our lands. And as we obtained our rights to this land by a free and voluntary treaty, in which each party freely participates through its own agents, selected on the part of the United States as its laws and customs required, and on the part of the Seneca tribe of Indians as its laws and customs provided, so we ask that, if we are to be deprived of any part of this land, it may be done by a treaty, and that we may be heard through our lawfully-authorized agents. And as such a treaty would require a ratification by your Senate and the President of the United States, so it would under our laws require ratification by a three-fourths vote of the legal electors, and also by a three-fourths vote of the mothers in our nation.

If, then, you have come to the conclusion that the land which we hold under your treaty of November 1, 1799, in these words, "Now, the United States acknowledge all the land within the aforementioned boundaries to be the property of the Seneca Nation, and the United States will never claim the same, nor disturb the Seneca Nation, nor any of the Six Nations or of their Indian friends residing thereon and united with them, in the free use

and enjoyment thereof, but it shall remain theirs until they choose to sell the same to the people of the United States who have the right to purchase," should be taken from us, we ask that it may be done in the manner in which it was set apart for us, *i.e.*, by treaty, and then only by our consent. And we earnestly urge that the passage of any law by Congress the effect of which would be to deprive us of any part of our land, under any pretext or consideration, would be a violation of that part of said treaty which says that this land shall remain ours until we choose to sell it.

And we would further remonstrate and state that we are the legal representatives of the Seneca Nation; that we derive our authority from a written constitution adopted by our nation December 4, 1848, and that as such a nation we have ever been acknowledged and dealt with by all the authorities of the United States and of the State of New York, and that we do, by a unanimous vote, attested by the signature of every councilor and officer of said nation, remonstrate against the passage of any law looking to the sale of one foot of our land; and we do in that manner state that the Seneca Nation do not choose to sell their land nor any part of it.

Your petitioners would further state that they do believe that every part and all of their lands are needed and required by their people; that they as a nation have discharged their duty in this, that no Indian is a charge upon the poor-fund or poor-house of the whites; that no Indian suffers for the want of food, clothing, or warmth; that provision has been made for the education of all our Indian children; and that the criminal records of the counties in which our lands are located will show that crimes are very much less frequent among our people than among an equal number of whites adjoining us. Our

churches are sustained with personal attendance and with money. While we are thus steadily progressing in the civilization of the whites, we are kept in constant terror by efforts being made upon all sides of us to take away our lands. The Ogden Land Company have ever been our steady, stealthy enemy, and have been and still are trying by every means to drive us from these lands, as they have or claim to have the right to them as soon as we can be removed from the soil. And now we have a new element of trouble. Many years ago the State of New York authorized the Erie Railroad to be built across the Allegany Indian reservation; a few years after, the Atlantic and Great Western Railroad was built across the same reservation, joining the Erie Railroad upon our lands at Salamanca; and now another railroad has been built, also terminating on our lands at Salamanca. All of these railroads have taken possession of as much land as they chose to, and their employes have taken other lands adjoining and built up a large town.

No part of these lands have been lawfully leased either under the authority, laws, and customs of the Seneca Nation of Indians, or of the laws of the United States, but the entire occupancy of lands surrounding the said railroad-junction at Salamanca is in violation of the laws of the United States, the laws of the State of New York, and the laws, customs, and usages of the Seneca Nation of Indians.

Your petitioners are informed that the application for the sale of our lands is being made in the interest of those white settlers, who have thus unlawfully obtained possession of our lands.

Your petitioners would further state that they are an agricultural people; that if they can be assured of holding their lands they can make permanent improvements, but

that every effort made to deprive them of their lands tends to prevent action in that direction; that all they need and ask is such an assurance of their continued possession as a refusal by Congress to consider any proposition providing for the sale of their lands. Your petitioners, therefore, pray that the act proposed may be rejected.

Your petitioners would further represent that they have appointed and authorized Harrison Halftown and Moses Stevenson, councilmen of our nation, and Andrew John, [6] a peacemaker thereof, to present this remonstrance, and to represent us before your honorable body.

Allegany Indian reservation, December 18, 1873.

[Signed by the president, secretary, treasurer, and councillors of the Allegany and Cattaraugus reservations.]

To the honorable the Congress of the United States:

Your petitioners, members of the Seneca Nation of Indians, residing in the Allegany and Cattaraugus reservations in the State of New York, respectfully remonstrate against the passage of bill House of Representatives 1053, "to authorize the Cattaraugus and Allegany Indians in the State of New York to lease lands, confirm leases, and quiet titles to their lands;" and we further represent that we are a nation claimed peaceable people, therefore we ask the honorable Congress to let us alone.

Dated Allegany reservation, January 31, 1874.

[Signed by William Patterson, jr., and 216 other males, and by 125 mothers of the nation.]

APPENDIX F(6)

Resolutions of the Legislature of New York

HOUSE OF REPRESENTATIVES

43rd CONGRESS, *3d Session.* — MIS. DOC. No. 75.

ALLEGANY RESERVATION IN NEW YORK.

RESOLUTIONS

OF

THE LEGISLATURE OF NEW YORK.

RELATIVE TO

The confirmation of leases between Indian and white settlers on the Allegany reservation, in said State.

FEBRUARY 8, 1875.—Referred to the Committee on Indian Affairs and ordered to be printed.

IN ASSEMBLY,
Albany, January 29, 1875.

On motion of Mr. Scudder:

Whereas the legislature of the State of New York has, at different times, ratified and confirmed leases between Indian and white settlers on the Allegany Indian reservation in said State; and,

Whereas the courts of this State have decided that said ratification is null and void, the Congress of the United States alone possessing power to deal with and for the Indians, and that as Judge Barker, of the

supreme court of this State, in an elaborate opinion, given in a suit to test the legality of such ratification of leases, did say that State action alone cannot accomplish the results; that the State should, through its legislature and executive officers, take appropriate steps to secure the aid and co-operation of the United States to secure to the white settlers the ratification of their leases, and to Protect them in their rights: Now, therefore,

Resolved, (if the senate concur,) That our Senators and Representatives in Congress are requested to lay the matter before Congress at an early day, and procure the passage of a law, or take some action for the relief of said white settlers.

Resolved, (if the senate concur,) That a copy of this resolution be furnished to each of the members of the Senate and Congress from this State.

By order:

HIRAM CALKINS, *Clerk.*

IN SENATE, *February* 2, 1875.

Concurred in without amendment.
By order:

APPENDIX F(7)

Protest of the President Councilors and People of the Seneca Nation of Indians

43D CONGRESS } SENATE. { MIS. DOC.
1st Session. } { No. 122.

PROTEST

OF THE

PRESIDENT, COUNCILORS, AND PEOPLE OF THE SENECA NATION OF INDIANS.

MADE IN THEIR NATIONAL COUNCIL,

AGAINST THE

Passage of the bill (H. R. No. 3080) to authorize the Seneca Nation to lease their lands within the Cattaraugus and Allegany reservations, and to confirm existing leases.

JUNE 6, 1874.—Referred to the Committee on Indian Affairs and ordered to be printed.

To the Senate of the United States:

We, the president, councilors, and people of the Seneca Nation of Indians, do most respectfully and earnestly protest against the passage of House bill No. 3080, "An act to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany reservations, and to confirm existing leases," now

pending before your honorable body. And we appeal to the treaties existing between the United States of America and the Senecas, and insist that, under their terms we should be protected against any legislation which deprives us of any part of the lands so guaranteed to us. And we would further state, as to the existing leases referred to, in said House bill No. 3080, they never had any validity, and it was so understood by all parties to them when they were executed: all leases of Indians lands were prohibited by the laws of the State of New York, (see laws 1813, 1821, and 1845:) and these leases were made void in law and equity by the United States laws for 1834, sections 11 and 12; and more, such leases were prohibited by the laws, customs, and usages of the Seneca tribe and Nation; and it was so distinctly understood, by the parties who applied to the counselors of the Nation to ratify them, that the councilors had no such power or authority; yet this bill proposes to make valid, not only those acts forbidden by the statutes of the United States, but also forbidden by the laws of the State of New York, and in violation of the rights, customs, laws, and usages of the Seneca Nation who own the land so effected, and by so doing force upon this Nation, these void, forbidden, and worthless leases, and compel them to carry them into effect, and to that extent deprive said Nation of their lands, in violation of treaty stipulations.

And your petitioners would further state, as to the powers conferred in said House bill No. 3080, in relation to leases hereafter to be made, [2] that the Seneca Nation holds all of said lands in tribal or national capacity; that their lands have not been allotted or divided; all the right any individual Indian has therein is confined to possession; that to confer the right of leasing upon

individuals would, work injustice among our people. That such an act would compel Indians to go into the courts of the United States, or of the State of New York, to obtain possession of their lands if a white man disputed it, as those tribunals would have sole jurisdiction to try all questions of right to your petitioners' land, and thus our courts would be legislated out of jurisdiction to try actions concerning the possession of their own lands.

Given in national council at the court-house on the Cattaraugus reservation, June 3, 1874.

WILLIAM NEPHEW, *President.*

Names of the councilors, Seneca Nation of Indians.

George Dennis.
William Krouse.
Isacc Halftoun.
Wallace Halftown.
Peter Snow.
Casler Redeye.
Peter Sundown.
William Redeye.
John Jack.
Henry Huffpur.
Andrew John, jr.
Adam Pierce.
Hiram Dennis.
Joseph Jemerson.
Samuel Jemerson.

CEPHAS TWO GUNS,
Clerk for the Seneca Nation of Indians.

APPENDIX F(8)

Letter from the Secretary of the Interior
(Washington, D.C., February 20, 1874)

43D CONGRESS, 1st Session. } SENATE { MIS. DOC. No. 71.

LETTER

FROM THE

SECRETARY OF THE INTERIOR,

to the

CHAIRMAN OF THE COMMITTEE
OF INDIAN AFFAIRS,

ACCOMPANYING

A copy of a memorial of the Indians of Cattaraugus and Allegany reservations, in the State of New York, protesting against the passage of the House bill 1053, *entitled "An act to authorize the Cattaraugus and Allegany Indians in the State of New York to lease lands, confirm leases, and quiet titles to their lands."*

FEBRUARY 24, 1874.—Referred to the Committee on Indian Affairs and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., February 20, 1874.

SIR: I have the honor herewith to present, for the consideration and action of Congress, a copy of a memorial of the Indians of the Cattaraugus and Allegany reservations in New York, remonstrating against the passsage of any law authorizing the sale of any part of such reservations without the consent of said Indians, owning the same, being first had and obtained, &c.

A copy of the letter, dated the 5th instant, of D. Sherman, agent for the New York Indians, forwarding said memorial, and a copy of a letter dated the 18th instant, from the Commissioner of Indian Affairs, inclosing the papers to this Department, are also herewith transmitted.

Very respectfully,

C. DELANO,
Secretary.

HON. WM. A. BUCKINGHAM,
Chairman Committee Indian Affairs, United States Senate.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS.
Washington, D. C., February 18, 1874.

SIR: I have the honor to transmit, herewith, two copies of a memorial of the Indians of Cattaraugus and Allegany reservations in New [2] York, received at this office, with letter of United States Indian Agent D. Sherman, dated the 5th instant, (copies also herewith), which it is respectfully requested may be submitted to Congress for the consideration and action of that body.

Very respectfully, your obedient servant,

EDWD. P. SMITH,
Commissioner.

The Hon. SECRETARY OF THE INTERIOR.

NEW YORK INDIAN AGENCY,
Forrestville, New York, February 5, 1874.

SIR: I send you by mail a memorial of the Indians of Cattaraugus and Allegany reservations, expressing the views of the memorialists on the subjects embraced in House bill No. 1053, relating to the leasing of lands on such reservations and other things, and containing a request to you to present same to the President for reference to Congress.

I am, very respectfully, your obedient servant.

D. SHERMAN,
Agent.

Hon. EDW. P. SMITH,
Commissioner of Indian Affairs, Washington, D. C.

Memorial of the Indians of the Cattaraugus and Allegany reservations in the State of New York, to the President and the honorable Senate and House of Representatives of the United States:

We, the undersigned, Indians residing upon the Cattaraugus and Allegany reservations in the State of New York, respectfully and earnestly remonstrate against the passage of any law by Congress authorizing the sale of any part of such reservations without the consent of said Indians, owning same, being first had and obtained; that we would regard such a law as in violation of existing treaty stipulations between the United States and the Seneca Nation of Indians.

And we further respectfully represent that the said Indians are unanimously opposed to the sale of any portion of their reservations.

And we further respectfully remonstrate against the passage of any law by Congress confirming leases made by individual Indians, not confirmed by the council of the Seneca Nation of Indians, of such reservations.

And we further represent that said Seneca Nation of Indians having heretofore, through their legislative council, duly elected by ballot, leased certain portions of their lands to certain railroad companies for right of way and for railroad purposes, and such companies, having paid said Seneca Nation therefor, and said companies having built rairoads and erected valuable railroad buildings on such leased lands for business purposes and the accommodation of the traveling public, we deem that it would be just for Congress to confirm such leases, and we respectfully recommend the passage of review for that purpose.

We also hereby beg leave to express our most sincere gratitude and thanks to our Great Father, the President, and to the honorable Senate and House of Representatives, for the humane and beneficial policy heretofore adopted in providing for the education of our children, and for [3] our civilization and improvement, and especially for the generous appropriations heretofore made by Congress for such purposes, and that our people everywhere, to secure their future advancements, stand greatly in need of the continuance of such aid as well as of the friendly counsel and assistance of all good men.

And we, the undersigned, representing as we think the best interests of our people, and their best intelligence, do hereby appoint, on account of their personal distinterestedness, their discretion, integrity, experience, and intimate knowledge of our affairs, Moses Stevenson, counsellor of the Seneca Nation of Indians, and Nicholson H. Parker, United States Interpreter, as our delegates to represent our views on the subjects embraced in the House of Representatives bill No. 1053, entitled "A bill to authorize the Cattaraugus and Allegany Indians in the State of New York to lease lands, confirm leases, and quiet titles to their lands," to our Great Father, the President, and to the honorable Senate and House of Representatives of the United States.

And we hereby request the United States agent for the Indians of New York to forward this our memorial to the honorable Commissioner of Indian Affairs for presentation to our Great Father, the President, and for reference to the honorable Senate and House of Representatives, having such bill under consideration.

And your memorialists will ever pray, &c.

Dated and signed at the Cattaraugus reservation, New York, this 3d day of February, A. D. 1874.

HIRAM DENNIS,
Chairman of Council.
MOSES B. PIERCE,
Secretary of Council.

William Jamieson.
Job Ring.
Z. L. Jimeson.
Peter White.
Daniel Two Gulls.
Wm. John, his x mark.
Wm. O. Parker.
Charles Kennedy.
Amos Moses.
N. H. Parker.
Lewis Seneca.
David Tallchief, his x mark.
Jabez Stevenson.
Little Joe, his x mark.
David Snow, his x mark.
George Tallchief.
Wm. Bluesky.
Alonzo Pierce.
Lorenzo Sanderson, his x mark.
John Wilson, his x mark.
Jonathan Waterman, his x mark.
Thomas Jimeson.
Marion Crouse.
Loseph Dudley.
David White.
Sylvester C. Lay.
Hanover Spring.
T. F. Jamison.
Isaac Warrior, his x mark.
Gilbert Butler, his x mark.
George Warrior, his x mark.
Jabez Jones, his x mark.
David Button, his x mark.
Parson Sundown, his x mark.
John Jackson, his x mark.
Alfred Silverheels, his x mark.
Edward Johnson, his x mark.
Alfred Crouse.
Israel Snow, his x mark.
Gordon Fatty, his x mark.
Major Harris, his x mark.
Robert Gordon, his x mark.
Jacob Halftown.
Sam Joe, his x mark.
William Bennett.
William Tallchief, his x mark.
Samuel Johnson, his x mark.
Jack Doxtator, his x mark.
Thomas Kennedy.
Nathaniel Kennedy.
Moses Stevenson.
James Spring.

I, Daniel Sherman, agent for the Indians of the State of New York,

* * *

APPENDIX F(9)

Congressional Record—House (1890)

SENECA NATION OF NEW YORK INDIANS.

The SPEAKER also laid before the House the bill (S. 4297) to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany reservations, and to confirm existing leases.

The bill was read, as follows:

Be it enacted, etc., That whenever the leases of land situate within the limits of the villages mentioned in the act of Congress entitled "An act to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany reservations, and to confirm existing leases," approved February 19, 1875, except leases to railroads, shall by the terms of said act be renewable, the same shall be renewable for a term not exceeding ninety-nine years, instead of the term of twelve years, as therein provided, subject to all other terms and conditions of said act.

Mr. ANDERSON, of Kansas. I would like to know something about that bill before it is put on its passage.

Mr. HOLMAN. I think the bill ought to go to the Committee on Indian Affairs. I make that motion.

Mr. PERKINS. I will say, Mr. Speaker, that the House committee considered a like bill and reported it favorably. The circumstances are better known and understood by the gentleman who represents the district [Mr. LAIDLAW]; but he does not seem to be in his seat at present. The committee, however, gave this matter careful consideration.

Under the existing law these Indians are authorized to make leases of their lands for a shorter period of time than that provided for in the bill. There is a large growing town situated on the reservation, and they occupy grounds under leases that are authorized by existing law. But the limited period for which leases can be made restricts in a great measure, as they claim, the growth and development of the city. They say that parties are not willing to invest the necessary money to establish manufacturing activities and enterprises of like character on the ground with the limit that the leases are confined to under existing law.

Mr. ANDERSON, of Kansas. What is the limit?

Mr. PERKINS. My recollection is twelve years.

Mr. ANDERSON, of Kansas. What is the increase proposed?

Mr. PERKINS. This increases it to ninety-nine years.

The comittee thought it to be in the interest of the Indians themselves, as well as in the interest of the people who are living in the town, now growing rapidly, as well as for the interest of all parties concerned, to authorize these leases.

I will say that this is a terminus or end of a division of the New York Central, or a branch of the New York Central road, and is a very important railroad center.

Mr. CHEADLE. Let me ask the gentleman a question. How are these leases to be readjusted, or is any provision made for that?

Mr. PERKINS. My recollection is that there is no provision in the bill for the readjustment of the leases.

Mr. CHEADLE. There ought to be a readjustment periodically after a certain number of years, I think.

Mr. PERKINS. No such provision was in the House bill, and my recollection is that there is none in the Senate bill.

Mr. JOSEPH D. TAYLOR. That can be provided by contract.

Mr. PERKINS. That can be provided by contract, as suggested by that gentleman from Ohio, and the committee did not deem it necessary to insert such a provision.

Mr. HOLMAN. Has the gentleman any information as to the views of the Indians in regard to the leases for ninety-nine years, and also on the readjustment question?

Mr. PERKINS. The gentleman from Indiana made the same inquiry. The bill does not provide for it, but, as suggested by the gentleman from Ohio, it can be provided for in the leases or contracts. The committee thought it unnecessary to insert such a provision in the House bill.

Mr. HOLMAN. But my inquiry was as to the views of the Indians themselves.

Mr. PERKINS. They are a bright people, and had intelligent representatives before the committee. They seem to be living almost entirely, perhaps to their own misfortune, on the rents or annuities they receive from the lands.

Mr. ANDERSON, of Kansas. What is the size of the Town?

Mr. PERKINS. It has now some fifteen or eighteen thousand inhabitants.

Mr. KERR, of Iowa. I make the point of order that there has been no motion made by the Committee on Indian Affairs to substitute the Senate bill for the House bill. I think that is necessary as a guaranty of safe legislation.

The SPEAKER. The Chair thinks the gentleman should make the point prior to the discussion, and not afterwards.

Mr. KERR, of Iowa. I think there has never been any consent asked by the Chair up to this time.

The SPEAKER. It is not necessary that the Chair should submit the request.

Mr. KERR, of Iowa. But if the gentleman from Kansas will say that this is identical with the House bill I will make no further objection.

Mr. PERKINS. It is the same; but the House committee has taken no action since the bill passed the Senate, and so I have not been authorized to ask this action on the part of the House. The House committee, however, considered the bill carefully before reporting it.

The SPEAKER. Does the gentleman from Iowa insist?

Mr. KERR, of Iowa. I withdraw my point of order.

The SPEAKER. The point of order is withdrawn and the question is on the third reading of the bill.

The bill was ordered to a third reading; and was accordingly read the third time, and passed.

The House bill of similar import was ordered to lie on the table.

APPENDIX F(9-a)

Congressional Record—Senate--(1890)

CONGRESSIONAL RECORD— [10075]
SENATE—(1890)

SENECA INDIAN LANDS.

Mr. DAWES. There is another bill connected with the New York Indians that I should like to call up.

Mr. SHERMAN. It is scarcely fair that we should not go on with the Calendar regularly.

Mr. DAWES. This bill has some connection with the New York Indians.

Mr. SHERMAN. After it is through I shall insist on the Calendar.

Mr. DAWES. If there is any debate about it I shall not press it. I ask that Calendar No. 1977, a bill introduced by the Senator from New York [Mr. HISCOCK], may be taken up.

The VICE-PRESIDENT. The title of the bill will be stated.

The CHIEF CLERK. Order of Business 1977, a bill (S. 4297) to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany reservations, and to confirm existing leases.

There being no objection, the bill was considered as in Committee of the Whole.

The bill was reported from the Committee on Indian Affairs with amendments.

The first amendment was, in line 9, after the word "same," to strike out "shall;" in line 10, before the word "be," to insert "may;" in the same line, after the word "far," to strike out "the term of" and insert "a term not exceeding."

Mr. DAWES. I desire to modify the amendment proposed by the committee in lines 9 and 10, so that it shall read: "the same shall be renewable for a term not exceeding ninety-nine years."

The VICE-PRESIDENT. The amendment will be stated.

The CHIEF CLERK. It is proposed, in lines 9 and 10, to amend the bill so as to read:

The same shall be renewable for a term not exceeding ninety-nine years.

The amendment was agreed to.

The next amendment of the Committee on Indian Affairs was, in line 12, after the word "all," to strike out "the" and insert "other;" so that the bill as amended will read:

That whenever the leases of land situate within the limits of the villages mentioned in the act of Congress entitled "An act to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany reservations, and to confirm existing leases," approved February 19, 1875, except leases to railroads, shall by the terms of said act be renewable, the same shall be renewable for a term not exceeding ninety-nine years, instead of the term of twelve years, as therein provided, subject to all other terms and conditions of said act.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

* * *

APPENDIX F(9-b)

Congressional Record—House (1877)

CONGRESSIONAL RECORD—HOUSE [1527]
(1877)

SENECA NATION OF NEW YORK INDIANS.

Mr. SEELYE. I ask consent to report for consideration at this time from the Committee on Indian Affairs House bill No. 4257, to amend an act entitled "An act to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany reservations, and to confirm existing leases," approved February 19, 1875.

I desire to state that I am instructed by the committee to report an amendment to the bill, to strike out the last section, the one to which on Saturday last the gentleman from Indiana [Mr. HOLMAN] objected. It is a bill that can cause no discussion, and it is quite important that it should be passed at an early day.

The SPEAKER. The bill will be read.

The bill was read, as follows:

Be it enacted, &c., That at the expiration of the leases as provided for by the act of which this is an amendment the Seneca Nation of New York Indians shall be entitled to the possession of said lands, except those parts thereof laid out, and to be laid out, and designated as streets, which shall be for the public use of the villages in which they are respectively located.

SEC. 2. That the boundaries of tracts or lots leased within the limits of villages upon the Allegany reservation indicated with black lines upon the maps, now on (illegible), prepared by the commissioners who were appointed by the President to execute the provisions of the act of Congress entitled "An act to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany

reservations, and to confirm existing leases," approved February 19, 1875, which are in conformity with the understanding of the parties to said leases, and are so occupied and claimed by the lessees, shall be held to be the boundaries of such leased tracts or lots, and the area embraced within such boundaries, so indicated in black ink, shall be held to be the land to be occupied and used by the lessees under their present leases, and in the renewal of the same, instead of the boundaries indicated in red ink, and the areas included within the same, which are in accordance with the descriptions in the leases, but not in accordance with the understanding of the parties.

SEC. 3. That in any case when the parties cannot agree upon the conditions in regard to the renewal of a lease and the amount of rent to be paid, then the councilors of said Seneca Indians and the other party shall each appoint a disinterested person as arbitrator; and if these two cannot agree, the United States agent for said Seneca Indians shall act as umpire, and his decision shall be final: *Provided*, That in leasing said lands, no rent shall be paid for more than one year in advance, and that any renewal of a lease shall not be executed more than three months prior to the expiration of the existing lease.

SEC. 4. That whenever two-thirds of the men and two-thirds of the women over twenty-one years of age on either or both of the Cattaraugus and Allegany reservations shall request the same in writing, duly witnessed, the Secretary of the Interior shall cause these reservations, or either of them, to be subdivided and allotted as to those entitled to said lands, in as nearly equal proportions as may be, having reference to the value of the same, in such manner as he may deem proper; and such allottees shall be entitled to the use and occupancy of their respective allotments, without, however, the power of alienation, except to an Indian, and not until ten years after said allotment is made; and

the Secretary of the Interior is authorized to have certificates issued to the said allottees expressing this condition.

SEC. 5. That the Secretary of the Interior shall appoint three commissioners, who shall have the boundaries of the Cattaraugus Indian reservation surveyed, and have the same marked with permanent monuments; and the plats and fieldnotes of the survey of the said boundary shall be made in triplicate, and, after approval by the General Land Office, one copy shall be filed in that office, one copy in the clerk's office of Cattaraugus County, New York, and one copy to be delivered to the authorities of the Seneca Indians; *Provided*, That the unexpended balance of the appropriation of $15,500, by act of July 31, 1876, to carry out the provisions of an act entitled "An act to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany reservations, and to confirm existing leases," approved February 19, 1875, shall be applicable for the payment of said commissioners, and the expenses incurred in the surveying of said boundaries.

Mr. SEELYE. It is the last section of the bill to which the gentleman from Indiana has objected and which I am directed to omit in reporting the bill.

Mr. HOLMAN. That section proposed to re-appropriate the unexpended balance.

The SPEAKER. Is there objection to the consideration of the bill?

Mr. HOLMAN. One other point. The appropriation of that $15,000 grew out of the direction of the Government to have that survey made. It is a liability which has been created on part of the Government and for that reason $15,000 was appropriated. Now I wish to ascertain from the gentleman from Massachusetts whether there is any other provision in the bill directing further survey to be made?

Mr. SEELYE. There is no provision with this section omitted. This section 5 of the bill did provide for the further survey of Cattaraugus reservation. But omitting this there is no provision for any new survey.

Mr. FORT. The House will have to strike that section out.

The SPEAKER. Is there any objection to the present consideration of the bill?

There was no objection.

The SPEAKER. The bill is now before the House and the first question is on the motion to strike out the fifth section.

Mr. SEELYE. I can explain the bill to the House in a moment, and then I think there will be no objection to it. This Allegany reservation is a strip of land about forty miles long by a mile and a half or two miles wide, owned by the Seneca Nation, which has been leased in portions to certain parties in a very irregular way, and in order to make those leases effectual Congress passed a law two years ago appointing a commission for the survey of the reservation. This bill simply provides that the survey thus made shall be recognized as the authority to which appeal shall be made in subsequent leases. I ask for the passage of the bill as amended, striking out the fifth section.

The SPEAKER. The question is first on the amendment to strike out the fifth section.

The amendment was agreed to.

The bill, as amended, was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. SEELYE moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

* * *

APPENDIX F(9-c)

Congressional Record—House (1877)

CONGRESSIONAL RECORD—HOUSE [1479]
(1877)

CATTARAUGUS AND ALLEGANY
INDIAN RESERVATIONS

Mr. SEELYE. I ask unanimous consent to report back from the Committee on Indian Affairs the bill (H. R. No. 4257) to amend an act entitled "An act to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany reservations, and to confirm existing leases," approved February 19, 1875, and ask that it be now put upon its passage.

Mr. FORT. I desire to reserve points of order on the bill.

The bill was read.

The SPEAKER. Is there objection to the present consideration of the bill?

Objection was made.

Mr. SEELYE. If the gentleman who makes objection will waive it for a single moment until I give a word of explanation I think he will not insist on his objection.

The SPEAKER. Objection has been made to the present consideration of the bill.

Mr. SEELYE. This is legislation which it is quite indispensable to make, and against which I think there will be no objection from any quarter. The bill has the unanimous approval of the Committee on Indian Affairs after very careful consideration. The Allegany reservation, occupying a strip of land of about forty miles long by a mile and a half in breadth—

The SPEAKER. The Chair thinks that objection cuts off debate.

Mr. SEELYE. I understood the objection to be withdrawn.

The SPEAKER. The Chair does not so understand.

Mr. SEELYE. Did not the gentleman from Indiana [Mr. HOLMAN] withdraw the objection?

Mr. HOLMAN. I did not make the objection; I rose for another purpose. The objection I should have made, if I had made one, would have been to the application of the $15,000 appropriated in the last session of Congress. I must object to that feature of the bill; but I have no objection to the survey being made.

Mr. SEELYE. That appropriation was made two years ago. There is no objection, then, I understand, to the present consideration of this bill.

Mr. HOLMAN. I object to that feature of the bill.

Mr. SEELYE. The gentleman can offer an amendment upon that point if he chooses.

The SPEAKER. The gentleman from Indiana makes an objection which is equivalent to an objection to the present consideration of the bill.

Mr. SEELYE. I do not understand that he objects to the consideration of the bill at this time.

Mr. HOLMAN. O, yes; I shall have to insist on my objection. That appropriation should never have been made, and I object to applying it in this way.

The SPEAKER. The gentleman cannot make a qualified objection.

Mr. SEELYE. If the gentleman from Indiana desires to offer an amendment, I am willing to admit it.

Mr. HOLMAN. I insist on my objection.

The SPEAKER. Objection being made, the bill is not before the House.

* * *

APPENDIX F(10)

House of Representatives Report No. 2786

51ST CONGRESS, *1st Session.* } HOUSE OF REPRESENTATIVES. { REPORT No. 2786.

SENECA NATION OF NEW YORK INDIANS.

JULY 22, 1890.—Referred to the House Calendar and ordered to be printed.

MR. GIFFORD, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany H. R. 10130.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 10130) to amend an act entitled "An act to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany Reservations and to confirm existing laws [sic]," approved February 19, 1875, having had the same under consideration, respectfully report:

The Seneca Nation of New York Indians now occupy the Cattaraugus and Allegany Reservations in western New York.

The Allegany Reservation is 40 miles long, extending from the Pennsylvania line up the Allegany River, in the State of New York, and lying on both banks of the river, and is situate wholly in Cattaraugus County, in the State of New York, being about a mile wide on an average and contains 30,469 acres of land.

The other reservation, called the Cattaraugus Reservation, extends from Lake Erie up the Cattaraugus Creek for the distance of about 12 miles and lies principally in the counties of Erie and Cattaraugus, with a small portion in the county of Chautauqua, and contains about 21,680 acres of land; the present bill has nothing to do with this reservation.

There are about two thousand Indians on both of these reservations, there being about twelve hundred on the Cattaraugus Reservation and eight hundred on the Allegany Reservation. The Indians cultivate not to exceed 3,000 acres on the Allegany Reservation, and not to exceed 4,000 acres on the Cattaraugus Reservation, the rest of the lands being unimproved, grown up to brush and small timber, with occasional patches of pasture interspersed.

The United States never owned these lands, the title thereto with a large tract of other lands in western New York having been in the State of Massachusetts; and the Ogden Land Company (so called) as the grantee of that State now own, or claim to own, the pre-emption right to both of these reservations; that is, said company claim to own the fee of the land subject to the Indian occupancy.

The Indians are governed by a constitution and laws of their own making. The constitution provides for the election annually of a president and sixteen councilors, and a clerk and treasurer; eight of said councilors being chosen from each reservation, and these officers compose the council of the Seneca Nation. The State of New York provides a counselor at law, who is appointed by the governor and confirmed by the senate, who is called the Indian attorney, and is paid by the State; and it is his duty to prosecute all actions in be- [2] half of the nation, and generally to look after the legal interests of the nation.

The State of New York supports, at its own expense, sixteen Indian common schools, all under the supervision of a competent superintendent. The attendance at all of said schools averages about 600 pupils on both reservations.

The State also supports an orphan asylum, where about 120 orphan children are cared for and educated. The Society of Friends also supports a large school on the Allegany Reservation, and the Indians have made considerable progress in civilization, some of them being quite intelligent.

About the year 1852 the Erie Railway had to pass through a portion of the Allegany Reservation, for the reason that it followed the valley of the Allegany River, leaving that valley where the village of Salamanca is now situated. Afterwards, about the year 1860, the Atlantic and Great Western Railroad was constructed, running from Cincinnati and connecting with the Erie at Salamanca. This road also had to pass up the valley of the Allegany River and through a portion of the Allegany Reservation. At the junction of these roads the two railroad companies erected round-houses, machine-shops, and depots, and of necessity employed a large number of men. These railroads leased the right of way and other necessary lands from the Seneca Nation for a period of ninety-nine years, and settled with the Indians to their satisfaction.

At Salamanca the Indians began to lease lands to white people employed by said railroads for village lots and afterwards to other people until in 1875 a large village had sprung up at that point, where a great deal of business is done, but the village was composed of hastily and cheaply constructed buildings on account of the uncertainty of the tenure and the invalidity of the leases. At that time, 1875, the villages of Vandalia, Carrollton,

and Great Valley had sprung up on the reservation at railroad stations on the Erie, and the village of Red House upon the line of the Atlantic and Great Western and Salamanca and West Salamanca at the junction of the two roads, as before stated.

All these villages are on the banks of the Allegany River, and people doing business with the railroads have to pass over a portion of the reservation to get to the railroad depots at these places. The Indians had, before 1875, leased more or less land to whites at all of these depots. Of course, under the statutes of the State of New York and of the United States all these leases were void, and although the whites and Indians got along fairly well, no one would build substantial structures upon any lease the Indians could give. This led to the passage of the act of Congress approved February 19, 1875 (see Statutes at Large, vol. 18). The act ratified existing leases and provided for their renewal for the period of twelve years and for further renewal.

The commissioners provided for in the act, in pursuance of section 3 thereof, surveyed these six villages, making a map of each village, and locating on the maps each lease respectively. All the villages so surveyed and bounded contain about 1,500 acres. After the passage of the act and the laying out of the villages aforesaid, the Buffalo, Rochester and Pittsburgh Railroad was built, which strikes the reservation at Salamanca and passes up the valley of the Allegany River and through the villages of Great Valley and Carrollton aforesaid, leaving the reservation at the last-mentioned place and passing on to Bradford and other points in Pennsylvania. Since the construction of that railroad the Western New York and Pennsylvania Rail-
[3] road has been built, running along the valley of the Allegany River, through the entire length of the

reservation, having a depot at Salamanca and the other villages above named. This railroad is upon the opposite side of the river from the other railroads before mentioned.

Salamanca is now the principal village, having by the last census over 6,000 inhabitants. It has a fine system of water works costing $50,000, sewers, natural gas for fuel, and a plant for the manufacture of illuminating gas, substantial churches, a high school with buildings costing $40,000, a large tannery, saw-mills, lace factory, two national banks and the usual industries that go to make up an active and enterprising town. Nearly all the business places are of brick, substantially built. The Allegany River has been bridged with two iron bridges costing $40,000. It is the railroad and business center of a large section of country simply on account of its location and in spite of the draw backs incident to its land tenure.

The present bill proposes to extend the term of these leases from twelve to ninety-nine years—and in that respect only does it change the law of 1875—and it relates only to the lands embraced in the villages as surveyed and located in pursuance of said act of 1875. It is urged to the committee that the growth and propserity of the town is retarded by the shortness of the term; that manufacturing on any extended scale or involving any considerable outlay is prevented; and that strangers, who would make desirable citizens, are kept away from the place. Your committee have no doubt that all this is true. It seems to your committee that the Indians would receive a great benefit from the growth of these villages, as it would tend to increase the value of their other lands, of which they now hold over 28,500 acres on this reservation alone, and it is to be remembered there are only about eight hundred Indians residing on this reservation.

The act of Congress above referred to is as follows:

[NOT OF GENERAL NATURE—NO. 25.]

AN ACT to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany Reservations, and to confirm existing leases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all leases of land within the Cattaraugus and Allegany Reservations in the State of New York, heretofore made by or with the authority of The Seneca Nation of New York Indians, to railroad corporations, are hereby ratified and confirmed; and said Seneca Nation may, in accordance with their laws and form of government, lease lands within said reservations for railroad purposes.

SEC. 2. That the President of the United States shall appoint three commissioners, whose duty it shall be, as soon as may be, to survey, locate, and establish proper boundaries and limits of the villages of Vandalia, Carrollton, Great Valley, Salamanca, West Salamanca, and Red House, within said Allegany Reservation, including therein, as far as practicable, all lands now occupied by white settlers and such other lands as, in their opinion, may be reasonably required for the purposes of such villages; and they shall cause a return of their doings in writing, together with maps of such surveys and locations duly certified by them, to be filed in the office of the county clerk of the county of Cattaraugus, in said State, there to be recorded and preserved. The boundaries of said villages so surveyed, located, and established shall be the limits of said villages for all the purposes of this act.

SEC. 3. That all leases of land situate within the limits of said villages when established as hereinbefore provided, except those provided for in the second section of this act, in which Indians or said Seneca Nation, or persons claiming under them are lessors, shall be valid and binding upon the parties thereto, and upon said Seneca Nation for a period of five years from and after the passage of this act, except such as by their terms may expire at an earlier date; and at the end of said period, or at the expiration of such leases as terminate within that time, said nation through its councillors shall be entitled to the possession of the said lands, and shall have the power to lease the same: *Provided, however,* That at the expiration of said period, or the termination of said leases, as hereinbefore provided, said leases shall be renew- [4] able for periods not exceeding twelve years, and the persons who may be at such time the owner or owners of improvements erected upon such lands shall be entitled to such renewed leases, and to continue in possession of such lands, on such conditions as may be agreed upon by him or them and such councillors; and in case they can not agree upon the conditions of such leases, or the amount of annual rents to be paid, then the said councillors shall appoint one person, and the other party or parties shall choose one person, as referees to fix and determine the terms of said lease and the amount of annual rent to be paid; and if the two be appointed and chosen can not agree, they shall choose a third person to act with them, the award of whom, or the major part of whom, shall be final and binding upon the parties; and the person or persons owning said improvements shall be entitled to a lease of said land and to occupy and improve the same according to the terms of said award, he or they paying rent and otherwise complying with the said lease or said award, and

whenever any lease shall expire after its renewal as aforesaid, it may, at the option of the lessee, his heirs or assigns be renewed in the manner hereinbefore provided.

SEC. 4. That said Seneca nation is hereby authorized, by resolution of its councillors, duly elected according to the laws and system of government of said nation, or in such other manner as said nation in council may determine, to lease lands within said villages, to which, by the laws or customs of said nation, no individual Indian or Indians, or other person claiming under him or them, has or is entitled to rightful possession.

SEC. 5. That it shall be the further duty of the said commissioners to cause all lands within such villages now leased, as hereinbefore mentioned, to be surveyed and (illegible) as near as may be, and to cause the same to be designated upon the maps of such villages hereinbefore mentioned and provided for. All leases of land within said villages, whether now existing or hereafter to be made under the provisions of this act, shall be recorded in the office of the clerk of said county of Cattaraugus in the same manner and with like effect as similar instruments relating to lands lying in said county outside of said reservations are recorded by the laws of said State of New York. All leases herein mentioned or provided for shall pass by assignment in writing, will, descent or otherwise in the manner provided by the laws of said State: *Provided, however,* That the rights of Indians in such leases shall descend as provided by the laws of said Seneca Nation.

SEC. 6. That all moneys arising from rents under the provisions of this act which shall belong to said Seneca Nation shall be paid to and receivable by the treasurer of said Seneca Nation, and expended in the same manner and for the same purposes as are other revenues or moneys belonging to said Seneca Nation.

SEC. 7. That the courts of the State of New York within and for the county of Cattaraugus, having jurisdiction in real actions, and the circuit and district courts of the United States in and for the northern district of said State, shall have jurisdiction of all actions for the recovery of rents and for the recovery of possession of any real property within the limits of said villages, whether actions of debt, ejectment, or other forms of action, according to the practice in said courts and actions of forcible entry and detainer, or of unlawful detainer, arising in said villages, may be maintained in any of the courts of said county which have jurisdiction of such actions.

SEC. 8. That all laws of the State of New York now in force concerning the laying out, altering, discontinuing, and repairing highways and bridges shall be in force within said villages, and may, with the consent of said Seneca Nation in council, extend to, and be in force beyond, said villages in said reservations, or in either of them; and all municipal laws and regulations of said State may extend over and be in force within said villages: *Provided, nevertheless,* That nothing in this section shall be construed to authorize the taxation of any Indian, or the property of any Indian not a citizen of the United States.

Approved, February 19, 1875.

The committee recommend the passage of the bill with the following amendment: Strike out all after the enacting clause and insert as follows:

"That whenever any of the leases of land situated within the limits of the villages mentioned in the act of Congress entitled 'An act to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany Reservations, and to confirm existing leases,' approved February 19, 1875, except leases to railroads shall by the terms of said act be renewable, the same shall be renewed for the term of ninety-nine years, instead of the term of twelve years as therein provided, subject to all the other terms and conditions of said act."

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APPENDIX F(11)

Senate Report No. 1680

SENATE.

51ST CONGRESS, *1st Session.* } { REPORT No. 1680.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 4, 1890.—Ordered to be printed.

Mr. DAWES, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany S. 4297.]

The Committee on Indian Affairs, to whom was referred Senate bill No. 4297, to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany Reservations, and to confirm existing leases, have had the same under consideration and report as follows:

The following is a history of the subject matter of this proposed legislation, taken from a report submitted to the House of Representatives at its present session (H. R. Report No. 2786):

The Seneca Nation of New York Indians now occupy the Cattaraugus and Allegany Reservations in western New York.

The Allegany Reservation is 40 miles long, extending from the Pennsylvania line up the Allegany River, in the State of New York, and lying on both banks of the river,

and is situate wholly in Cattaraugus County, in the State of New York, being about a mile wide on an average and contains 30,469 acres of land.

The other reservation, called the Cattaraugus Reservation, extends from Lake Erie up the Cattaraugus Creek for the distance of about 12 miles and lies principally in the counties of Erie and Cattaraugus, with a small portion in the county of Chautauqua, and contains about 21,680 acres of land; the present bill has nothing to do with this reservation.

There are about two thousand Indians on both of these reservations, there being about twelve hundred on the Cattaraugus Reservation and eight hundred on the Allegany Reservation. The Indians cultivate not to exceed 3,000 acres on the Allegany Reservation, and not to exceed 4,000 acres on the Cattaraugus Reservation, the rest of the lands being unimproved, grown up to brush and small timber, with occasional patches of pasture interspersed.

The United States never owned these lands, the title thereto with a large tract of other lands in western New York having been in the State of Massachusetts; and the Ogden Land Company (so called) as the grantee of that State now own, or claim to own, the pre-emption right to both of these reservations; that is, said company claim to own the fee of the land subject to the Indian occupancy.

The Indians are governed by a constitution and laws of their own making. The constitution provides for the election annually of a president and sixteen councilors, and a clerk and treasurer; eight of said councillors being chosen from each reservation, and these officers compose the council of the Seneca Nation. The State of New York provides a counselor at law, who is appointed by the governor and confirmed by the senate, who is called the Indian attorney, and is paid by the State; and it is his

duty to prosecute all actions in be-[2] half of the nation, and generally to look after the legal interests of the nation.

The State of New York supports, at its own expense, sixteen Indian schools, all under the supervision of a competent superintendent. The attendance at all of said schools averages about 600 pupils on both reservations.

The State also supports an orphan asylum, where about 120 orphan children are cared for and educated. The Society of Friends also supports a large school on the Allegany Reservation, an the Indians have made considerable progress in civilization, some of them being quite intelligent.

About the year 1852 the Erie Railway had to pass through a portion of the Allegany Reservation, for the reason that it followed the valley of the Allegany River, leaving that valley where the village of Salamanca is now situated. Afterwards, about the year 1860, the Atlantic and Great Western Railroad was constructed, running from Cincinnati and connecting with the Erie at Salamanca. This road also had to pass up the valley of the Allegany River and through a portion of the Allegany Reservation. At the junction of these roads the two railroad companies erected round-houses, machine-shops, and depots, and of necessity employed a large number of men. These railroads leased the right of way and other necessary lands from the Seneca Nation for a period of ninety-nine years, and settled with the Indians to their satisfaction.

At Salamanca the Indians began to lease lands to white people employed by said railroads for village lots and afterwards to other people until in 1875 a large village had sprung up at that point, where a great deal of business is done, but the village was composed of hastily and cheaply constructed buildings on account of the

uncertainty of the tenure and the invalidity of the leases. At that time, 1875, the villages of Vandalia, Carrollton, and Great Valley had sprung up on the reservation at railroad stations on the Erie, and the village of Red House upon the line of the Atlantic and Great Western, and Salamanca and West Salamanca at the junction of the two roads, as before stated.

All these villages are on the banks of the Allegany River, and people doing business with the railroads have to pass over a portion of the reservation to get to the railroad depots at these places. The Indians had, before 1875, leased more or less land to whites at all of these depots. Of course, under the statutes of the State of New York and of the United States all these leases were void, and although the whites and Indians got along fairly well, no one would build substantial structures upon any lease the Indians could give. This led to the passage of the act of Congress approved February 19, 1875 (see Statutes at Large, vol. 18). The act ratified existing leases and provided for their renewal for the period of twelve years and for further renewal.

The commissioners provided for in the act, in pursuance of section 3 thereof, surveyed these six villages, making a map of each village, and locating on the maps each lease respectively. All the villages so surveyed and bounded contain about 1,500 acres. After the passage of the act and the laying out of the villages aforesaid, the Buffalo, Rochester and Pittsburgh Railroad was built, which strikes the reservation at Salamanca and passes up the valley of the Allegany River and through the villages of Great Valley and Carrollton aforesaid, leaving the reservation at the last-mentioned place and passing on to Bradford and other points in Pennsylvania. Since the construction of that railroad the Western New York and Pennsylvania Rail-[3]

road has been built, running along the valley of the Allegany River, through the entire length of the reservation, having a depot at Salamanca and the other villages above named. This railroad is upon the opposite side of the river from the other railroads before mentioned.

Salamanca is now the principal village, having by the last census over 6,000 inhabitants. It has a fine system of water-works costing $50,000, sewers, natural gas for fuel, and a plant for the manufacture of illuminating gas, substantial churches, a high school with buildings costing $40,000, large tannery, saw-mills, lace factory, two national banks, and the usual industries that go to make up an active and enterprising town. Nearly all the business places are of brick, substantially built. The Allegany River has been bridged with two iron bridges costing $40,000. It is the railroad and business center of a large section of country simply on account of its location and in spite of the draw-backs incident to its land tenure.

The present bill proposes to extend the term of these leases from twelve to ninety-nine years—and in that respect only does it change the law of 1875—and it relates only to the lands embraced in the villages as surveyed and located in pursuance of said act of 1875. It is urged to the committee that the growth and prosperity of the town is retarded by the shortness of the term; that manufacturing on any extended scale or involving any considerable outlay is prevented; and that strangers, who would make desirable citizens, are kept away from the place. Your committee have no doubt that all this is true. It seems to your committee that the Indians would receive a great benefit from the growth of these villages, as it would tend to increase the value of their other lands, of which they now hold over 28,500 acres on this

reservation alone, and it is to be remembered there are only about eight hundred Indians residing on this reservation.

The act of Congress above referred to is as follows:

[NOT OF GENERAL NATURE.—No. 25.]

AN ACT to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany Reservations, and to confirm existing leases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all leases of land within the Cattaraugus and Allegany Reservations in the State of New York, heretofore made by or with the authority of the Seneca Nation of New York Indians, to railroad corporations, are hereby ratified, and confirmed; and said Seneca Nation may, in accordance with their laws and form of government, lease lands within said reservations for railroad purposes.

SEC 2. That the President of the United States shall appoint three commissioners, whose duty it shall be, as soon as may be, to survey, locate, and establish proper boundaries and limits of the villages of Vandalia, Carrolton, Great Valley, Salamanca, West Salamanca, and Red House, within said Allegany Reservation, including therein, as far as practicable, all lands now occupied by white settlers and such other lands as, in their opinion, may be reasonably required for the purposes of such villages; and they shall cause a return of their doings in writing, together with maps of such surveys and locations duly certified by them, to be filed in the office of the county clerk of the county of Cattaraugus, in said State, there to be recorded and

preserved. The boundaries of said villages so surveyed, located, and established shall be the limits of said villages for all the purposes of this act.

SEC. 3. That all leases of land situate within the limits of said villages when established as hereinbefore provided, except those provided for in the second section of this act, in which Indians or said Seneca Nation, or persons claiming under them are lessors, shall be valid and binding upon the parties thereto, and upon said Seneca Nation for a period of five years from and after the passage of this act, except such as by their terms may expire at an earlier date; and at the end of said period, or as the expiration of such leases as terminate within that time, said nation through its councillors shall be entitled to the possession of the said lands, and shall have the power to lease the same: *Provided, however,* That at the expiration of said period, or the termination of said leases, as hereinbefore provided, said leases shall be renew-[4] able for periods not exceeding twelve years, and the persons who may be at such time the owner or owners of improvements erected upon such lands shall be entitled to such renewed leases, and to continue in possession of such lands, on such conditions as may be agreed upon by him or them and such councillors; and in case they can not agree upon the conditions of such leases, or the amount of annual rents to be paid, then the said councillors shall appoint one person, and the other party or parties shall choose one person, as referees to fix and determine the terms of said lease and the amount of annual rent to be paid; and if the two so appointed and chosen can not agree, they shall choose a third person to act with them, the award of whom, or the major part of whom, shall be final and binding upon the parties; and the person or persons owning said improvements shall be entitled to a lease of said land and

to occupy and improve the same according to the terms of said award, he or they paying rent and otherwise complying with the said lease or said award, and whenever any lease shall expire after its renewal as aforesaid, it may, at the option of the lessee, his heirs or assigns, be renewed in the manner hereinbefore provided.

SEC. 4. That said Seneca Nation is hereby authorized, by resolution of its councillors, duly elected according to the laws and system of government of said nation, or in such other manner as said nation in council may determine, to lease lands within said villages, to which, by the laws or customs of said nation, no individual Indian or Indians, or other person claiming under him or them, has or is entitled to the rightful possession.

SEC. 5. That it shall be the further duty of the said commissioners to cause all lands within such villages now leased, as hereinbefore mentioned, to be surveyed and defined as near as may be, and to cause the same to be designated upon the maps of such villages hereinbefore mentioned, and provided for. All leases of lands within said villages, whether now existing or hereafter to be made under the provisions of this act, shall be recorded in the office of the clerk of said county of Cattaraugus in the same manner and with like effect as similar instruments relating to lands lying in said county outside of said reservations are recorded by the laws of said State of New York. All leases herein mentioned or provided for shall pass by assignment in writing, will, descent, or otherwise in the manner provided by the laws of said State: *Provided, however,* That the rights of Indians in such leases shall descend as provided by the laws of said Seneca Nation.

SEC. 6. That all moneys arising from rents under the provisions of this act which shall belong to said Seneca Nation shall be paid to and recoverable by the treasurer

of said Seneca Nation, and expended in the same manner and for the same purposes as are other revenues or moneys belonging to said Seneca Nation.

SEC. 7. That the courts of the State of New York within and for the county of Cattaraugus, having jurisdiction in real actions, and the circuit and district courts of the United States in and for the northern district of said State, shall have jurisdiction of all actions for the recovery of rents and for the recovery of possession of any real property within the limits of said villages, whether actions of debt, ejectments, or other forms of action, according to the practice in said courts; and actions of forcible entry and detainer, or of unlawful detainer, arising in said villages, may be maintained in any of the courts of said county which have jurisdiction of such actions.

SEC. 8. That all laws of the State of New York now in force concerning the laying on, altering, discontinuing, and repairing highways and bridges shall be in force within said villages, and may, with the consent of said Seneca Nation in council, extend to, and be in force beyond, said villages in said reservations or in either of them; and all municipal laws and regulations of said State may extend over and be in force within said villages: *Provided, nevertheless,* That nothing in this section shall be construed to authorize the taxation of any Indian, or the property of any Indian not a citizen of the United States.

Approved, February 19, 1875.

The committee recommend the passage of the bill, with two amendments, taking away its compulsory features. It is the opinion of the committee that the Indians themselves should have some voice in the renewal of these leases, and the amendments proposed will secure to them the liberty they are entitled to in the disposition of their rights in their own lands.

APPENDIX F(12)

House of Representatives
Report No. 2344

HOUSE OF REPRESENTATIVES.

49TH CONGRESS, 1st Session. } { REPORT No. 2344.

LANDS OF THE SENECA INDIANS.

MAY 11, 1886.—Referred to the House Calendar and ordered to be printed.

Mr. STORM, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany bill H. R. 8746.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 1642) to allot the lands of the Seneca Indians in New York, having had the same under consideration, make the following report:

The said bill, as amended by the committee, seeks to allot the lands comprising the Cattaraugus and Allegany Reservations, in the State of New York, to the Seneca tribe of Indians occupying the same in severalty.

The first section of the bill declares these Indians to be citizens of the United States. If they are competent to hold their lands in severalty they ought to enjoy all the privileges and perform all the duties of citizenship.

The second section directs the President of the United States to appoint three commissioners to allot and divide the lands of the said reservation among the resident

Indians, share and share alike, on the basis of the value of the same, the children and women to share equally with male adults.

By the third section the allotments are to be so made as to include the improvements made by any Indian on his piece of land.

Sections 4 and 5 extend the laws of the State of New York as to rights of property, and as to inheritance of real and personal estate, to the Indians on the reservations; except, however, that the lands allotted to each individual Indian shall remain inalienable for a period of twenty-five years; nor shall such Indian in any way encumber the same during said period of time, and during said term of twenty-five years they shall be exempt from all taxation. And at the end of said twenty-five years the President of the United States may, if he shall deem it for the best interest of the said Indians, continue the exemption of said lands from conveyance, encumbrance, and taxation for twenty-five years more.

Section 6 relates to the duties of the commissioners in preparing the maps of said survey, marking the boundaries, and allotting the lands, the return to be made by them; and for the patent to be issued by the Secretary of the Interior to the several allottees.

Section 7 appropriates the fund of $233,050 now in the United States treasury belonging to the said Indians for their use, and properly made this fund against loss while in the hands of the commissioners for disbursement.

[2] Section 8 provides that the rents due the Seneca Nation on leases of their said lands heretofore made, together with the fund appropriated by the preceding section, shall be expended by the commissioners in the purchase of farm implements, teams, and seeds, and the balance of said money shall be paid to the Indians, &c.

Section 9 simply legalizes certain leases of the lands in said reservation under the act of Congress approved February 19, 1875.

Section 10 provides that within one year after said lands have been allotted any Indian desiring to sell his allotment may do so through the said commissioners on the approval of the Secretary of the Interior. The proceeds of such sale, together with the share to which each Indian on said reservation shall be entitled, shall be paid to the Secretary of the Interior, and by him to be used for the benefit of each of said Indians whose lands have been so sold, and then the Secretary of the Interior shall issue a patent in the usual form to the purchaser.

Section 11 gives to each Indian whose lands have been sold as stated in the preceding section the right to locate on lands in the Indian Territory.

Section 12 provides for an election by the Indians on the question of the allotment of lands in severalty. It requires the assent of a majority of the male Indians twenty-one years of age and upwards, expressed by ballot, after due public and timely notice of such an election. It further provides, in case the Indians on said reservation as a tribe shall decide not to accept their lands in severalty, then any Indian on said reservations, desiring to hold his share of said lands in severalty, shall make application to the Secretary of the Interior, who shall cause the same to be set off and allotted to him in fee, &c.

Section 13 extends the laws, both civil and criminal, of the State of New York, so far as applicable, and not in conflict with the provisions of this act, over said reservations. The last section appropriates the sum of $20,000 to carry out the provisions of the said act.

The time has come when the United States must adopt a different policy in relation to these Seneca Indians. The

welfare of the Senecas and of the surrounding white population alike demand the change. The progress of society and the growth of that section require such alteration of policy. The principles of the bill are in the direction of the best thought on the Indian question. It can now be fairly said that all the departments of the Government favor the idea of granting lands to the Indians in severalty, under restrictions more or less stringent, according to the advancement the Indian has made in civilization.

No tribe of Indians are better fitted for this experiment than the Seneca Indians of Western New York. For more than a century they have been the subjects of educational and religious teachings and influences. At a very early day the Society of Friends commenced their missionary labors among them, and they have continued down to the present time.

The Seneca Indians on the Allegany Reservation occupy a strip of land lying on each side of the Allegany River, averaging about half a mile in width, and extending more than 40 miles, and containing 30,469 acres. The bottom land is good in quality, though liable to overflow, some of which is under cultivation; the land lying back from the river is mostly timber, and is inferior in fertility. According to a census report for 1865, the wealth of this band is $60,000; they have 54 frame, 30 log, and 62 plank dwellings. The land cultivated is put down at 2,436 acres, and the products are stated to be 174 bushels of wheat, 6,260 bushels of corn, 329 bushels of rye, 4,779 bushels of potatoes, 47 bushels of turnips, [3] 434 tons of hay, 635 pounds of maple sugar. Their stock numbers 84 horses, 377 cattle, 289 swine, and 55 sheep.

The population for a number of years has been gradually increasing, and at the last census there were 949, of whom 426 were children; of these, 356 were

between 4 and 21 years of age. The number of families is about 180. There are six schools on this reservation, under the care of the State superintendent of public schools, and are supported from State funds. Besides there is a Friends' boarding school on their farm, adjoining the reservation, for the benefit of these Indians.

The Senecas on the Cattaraugus Reservation occupy lands along the Cattaraugus Creek, in Erie, Cattaraugus, and Chautauqua Counties, New York. The soil is fertile and well adapted to farming; a large part of it is cleared and fenced, and some of the farms are well cultivated. There are 21,680 acres, with a population of 1,512, one-half of whom are children, and over 500 are of school age. They have 43 frame, 103 log, and 103 plank dwellings, and 15 shanties. The wealth of this band is put down at $85,000. There are represented to be 4,962 acres under cultivation, and yielding 3,082 bushels of wheat, 12,363 of corn, 82 of barley, 11,104 of potatoes, and 759 tons of hay. They make 972 pounds of sugar, and have 285 horses, 907 cattle, 494 swine, and 24 sheep.

On this reservation and at Allegany there are places of worship comfortably furnished, occupied by Presbyterians, Methodists, and Baptists.

The principal of the annuity funds held by the United States and belonging to the Indians on those reservations is $233,050, the annual interest of which is $11,902.50, and is annually paid to them through the Seneca agent. This annual payment when divided among these Indians gives a per capita sum of $3.90; the lands if equally divided would give to each individual Indian 20 acres. This small sum annually doled out by Government is of little benefit to the industrious Indian, and to the one who is thriftless it is really a curse, only serving him for a few days' debaneh. Such is the information the

committee have received from those who know the facts. These lazy, shiftless Indians are obstacles to the progress of the industrious and frugal. The United States, which have assumed the guardianship of these people, have no right to tie down this better class to this worse class by the fetters of tribal relations. Let such Indian willing to become a citizen of the United States, and desiring to hold his share of the common property in severalty, have the right to do so. In no other way is it possible to make them self-supporting and self-respecting. The status of these Indians amply warrants this undertaking. They are not like their red brethren in the West, surrounded by hostile tribes or unfriendly whites, but are on all sides surrounded by a highly civilized and Christian population, who are friendly and kindly disposed.

These reservations are now impediments to the natural and healthy growth of that section of the State of New York. Railroads have been constructed through these lands. The Atlantic and Great Western Railway runs over them through the city of Salamanca and the village of Red House for a distance of 16 miles; the New York and Erie Railway runs through them for a distance of about 15 miles; a third railway, from Pittsburgh, runs through the entire length of the reservation, which is about 40 miles. Along the lines of these railways a large number of towns and villages has grown up within the last ten or fifteen years. So pressing did the necessity become for some method to accommodate this growth that in 1875 Congress authorized [4] the Indians to execute leases for lands along portions of these roads and ratified the leases theretofore made by the Indians of these same lands. By the terms of the act these leases are practically perpetual, for the lessee has the right to have the same renewed every twelve years *ad infinitum*.

The bill recommended by the committee goes only one step further in removing restrictions upon the alienation of these lands, but does it with less indirection than Congress did in 1875.

Men will not improve on leased lands as they will on lands which they own in fee simple. All improvements on such leased lands will be less permanent and costly than where the improver knows that he will certainly reap, unmolested, the fruits of his labor.

The committee report the accompanying bill as a substitute for said House bill 1642, and recommend that it do pass.

APPENDIX F(13)

Letter from the Secretary of the Interior
(Washington, D.C., February 1, 1895)

SENATE.

53D CONGRESS, *3d Session.* } { EX. DOC. No. 52.

IN THE SENATE OF THE UNITED STATES

LETTER

FROM

THE SECRETARY OF THE INTERIOR,

TRANSMITTING

Information relating to the Ogden Land Company, and to the claim of said company to certain lands of the Seneca Nation of Indians.

FEBRUARY 2, 1895.—Referred to the Committee on Indian Affairs and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, February 1, 1895.

SIR: In compliance with the following provision contained in the act of August 15, 1894, making appropriations for the Indian Service (28 Stats., 301):

That the Secretary of Interior be, and hereby is, authorized to make a thorough investigation of the facts touching the so-called Ogden Land Company, its

organization, when and by whom formed, its continued existence or organization to this date, its capital stock, number of shares, amount or face value, where and by whom held, its liabilities and assets, and the original history of the alleged claim of said company to any of the lands of the Seneca Nation of Indians in the State of New York, and any and all evidences of title; and also the condition of said Indians, their progress in civilization and fitness for citizenship, their number and system of government, and the propriety of allotting their lands in severalty, and to make to Congress a full report with such suggestions and recommendations as he may deem proper in view of all the facts ascertained.

I have the honor to transmit herewith copy of a communication of the 19th instant from the Commissioner of Indian Affairs, containing a history of the claim in question to certain lands of the Seneca Nation of Indians in the State of New York, and the origin of the title.

The Commissioner is of opinion that the Ogden Land Company has a valid existing right and interest in the Allegany and Cattaraugus and in a portion of the Tuscarora reservations, and he says:

The extent or quantity of this interest seems to be fully recognized by the courts and by the legislature of the State of New York, but the value of the interest is unfixed and undetermined and does not, I believe, admit of definite ascertainment.

He also says that it seems to him—

That the first and most essential thing to be done in the solution of the Indian problem is the extinguishment of the claim of the Ogden Land Company. This being accomplished, the allotment of their land in severalty, the conferring of full citizenship upon the Indians, the repeal of all special State laws with certain exceptions

* * *

THEIR SYSTEM OF GOVERNMENT AND THE PROPRIETY OF ALLOTTING THEIR LANDS IN SEVERALTY

[16] As heretofore stated, the Senecas residing upon the Cattaraugus, Allegany, and Oil Springs reservations are a corporate body, under the name of "The Seneca Nation of Indians," by an act of the legislature, and own a common interest in the lands of the three reservations. After the Senecas secured the return to them of their two reservations by the treaty of 1842, many of them becoming alarmed at the action of their chiefs in selling their lands began an agitation to change their form of government. This step encountered great opposition on the part of the chiefs, but at a general convention of the Senecas held on the Cattaraugus Reservation a series of resolutions and a "declaration changing their form of Government, and adopting a constitutional charter" were passed, in which they agreed to "abolish, abrogate, and annul" their form of government by chiefs. The chiefs who had thus been deposed from power endeavored to prevent the ratification of the new government by the United States and State of New York. After the recognition of the new government by the United States the chiefs sent a delegation to Albany to prevent any assent on the part of the State, but after an investigation of the subject by a committee of the assembly the legislature also recognized the new government, and the power of the chiefs was to a certain extent broken and destroyed.

In commenting upon this subject the late committee of the legislature stated that—

The history of these Indians, as well as that of every other tribe in the State, conclusively proves that the chiefs and officeholders have invariably barred the way

to progress and improvement among them, and from these sources alone may be expected opposition to all plans for their future welfare.

Under their amended constitution adopted January 13, 1893, their government has three departments: Legislative, executive, and judiciary.

The legislative power is vested in a council of 16 members, called the councillors of the Seneca Nation of Indians, of whom 8 are elected annually for the Cattaraugus and 8 for the Allegany reservations. Such annual elections are held on the first Tuesday of May in each year. Ten members constitute a quorum, and in all appropriations of public money an affirmative vote of at least ten of the whole number elected is made necessary.

The executive power is vested in a president, whose duty it is to preside over the deliberations of the council, having only a casting vote therein, and who is also required from time to time to give to the council information of the state of the nation, and recommend to its consideration such measures as he may deem necessary and expedient. He must see that the laws of the nation are faithfully executed, and fill all vacancies by appointment that may occur on the council until such vacancy shall be filled by election.

In case of death or absence of the president the council chooses from among its number a presiding officer pro tempore.

The judiciary power is vested in courts known as peacemakers' and surrogates' courts. The peacemakers' courts are composed of three members each, to be elected from residents of the respective reservations, their term of office three years. It is provided by the constitution that the jurisdiction, forms of process, and proceedings under the law applicable to these courts shall be the same as in courts of justices of the peace of the State of

New York. The peacemakers on each reser-[17] vation are vested with the power to hold court and preserve order in the same manner as a justice of the peace; they also have jurisdiction in divorces between Indians residing on their respective reservations, and to hear and determine all questions and actions between individual Indians residing on said reservations involving the title to or possession of real estate on said reservations. All determinations and decisions of this court are appealable to the council, and all cases of appeal are decided by the council upon the evidence taken in the peacemakers' court, and the decision of the council is final. Upon the hearing either party in interest has the right to appear either in person or by counsel and argue the merits of the case.

The surrogate's court is composed of one person from the Allegany and one from the Cattaraugus Reservation elected from the residents of the respective reservations, and the term of office is two years. Their jurisdiction is the same as surrogates of the several counties of the State, with the same forms, process, and proceedings. An appeal lies from the decisions of this court the same as from the peacemaker's court.

The treaty-making power is vested in the council, subject to the approval of at least three-fourths of the legal voters, and the consent of three-fourths of the mothers of the nation.

The constitution provides a clerk and treasurer for the nation and two marshals—one of whom shall reside in the Cattaraugus and the other on the Allegany Reservation—the rights, duties, and liabilities of which officers are as heretofore defined by law.

The council provides for the election of highway commissioners, overseers of the poor, assessors, and policemen for each of the said reservations.

All officers of the nation named in the constitution, except peacemakers and surrogates are elected annually for the period of one year, and all may be impeached and removed for cause in such manner and form as may be prescribed by the council.

Every male Indian of the age of 21 years and upward, residing upon either of the reservations of the nation, and who shall not have been convicted of a felony, is competent to vote at all elections and meetings of the electors of the nation, and is eligible to any office in the gift of the people of the nation.

The council meets on the first Tuesday of June in each year, and the president has power to convene it in extra session as often as the interests of the nation may, in his judgment, require.

The council has power to make laws not inconsistent with the Constitution of the United States or of the State of New York, or of the Seneca Nation.

The constitution may be altered or amended at any time the council deem necessary; and it shall be lawful for the council, in their discretion, by at least a quorum vote, to appoint a committee of three on revision. It is the duty of such committee on ten days' notice of their appointment to prepare amendments to the constitution and report the constitution to the council, who shall submit the same to the electors of the nation for their approval or rejection, to be determined by a majority vote of the qualified electors at a meeting called by the council on said reservations for that purpose. In case of rejection by the electors no further action looking to amendment can be taken within one year.

The foregoing gives, in substance, the provisions of the constitution of the Seneca Nation.

[18] The existing form of government is an improvement on the old system; but even this new plan of carrying on the affairs of the nation is insufficient to protect the rights of the people. Their courts are frequently alleged to be ignorant and incompetent and often venal, and their councilors and officers selfish and corrupt. One additional step would place these Indians wholly under the protection of the laws of the State.

LAWS OF THE STATE OF NEW YORK FOR THE GOVERNMENT OF THESE INDIANS.

Since the year 1813 many special laws have been passed by the State of New York for the protection and government of the Indians within its borders. The latest of these laws of which I have any information are found in "An act in relation to Indians, constituting chapter 5 of the General Laws," approved by the governor May 18, 1892, and amended by chapter 229, approved March 27, 1893.

By section 40 of said chapter 5 the Seneca Indians residing on the Allegany and Cattaraugus reservations are designated "the Seneca Nation," and the Seneca Indians residing on the Tonawanda Reservation are designated "the Tonawanda Nation." Section 41 abolishes the government of the Seneca Nation by chiefs, and declares that said nation shall have as officers those above designated in the constitution. Section 42 provides for the time, place, and manner of electing these officers. Section 43 prescribes the qualifications of voters and eligibility to office.

Sections 44 and 45 prescribe the compensation and duties of the treasurer and clerk, respectively, and section 46 fixes the compensation of the peacemakers.

Section 47 defines the jurisdiction of the peacemakers' courts. The jurisdiction thus conferred is exclusive in controversies involving the title to real property between individual Indians, and in divorces; and I should note here that it is this exclusive jurisdiction in real property and divorces, conferred upon courts known to be incompetent and alleged to be corrupt, that gives rise to many troubles and wrongs that can not be righted except by additional legislation.

Section 48 requires the keeping of a record by the peacemakers' court.

Section 49 fixes the costs and fees, and requires that they be paid to the treasurer of the nation for its use.

Section 50 prescribes remedy for incompetency of peacemakers arising out of the relation by blood of either of them to either of the parties to an action.

Section 51 provides for taking appeals from decisions of peacemakers to the council.

Section 52 relates to appeals from the peacemakers' court of the Tonawanda Nation.

Section 53 relates to the enforcement of judgments.

Section 54 prescribes the powers and duties of the marshals.

Section 55 provides that the Seneca Nation may prosecute, by the name of "The Seneca Nation of Indians," actions and proceedings to protect their rights and interests in the Allegany, Cattaraugus, and Oil Spring reservations, and that in every action or proceeding in relation to lands or real property situated within said reservations, may allege a seizin in fee: but such recovery shall not in any way affect the right, title, and interest of such Indians in such reservations, as between them [19] and the grantee or the assignee of the preemption right of such reservations, under the grants of the State of Massachusetts. Actions or proceedings

may be prosecuted by the Tonawanda Nation by the name of "The Tonawanda Nation of Indians."

Section 56 relates to the very important matter of allotting lands in severalty. It provides that all lands on either the Allegany, Cattaraugus, or Tonawanda reservation, except such as have been allotted by the national council, or lands on the Allegany and Cattaraugus reservations appropriated, cultivated, and improved by any Indian or Indian family, or the heirs thereof, in accordance with the laws and usages of the Seneca Nation, or lands on the Tonawanda Reservation to which the possessors have become entitled in pursuance of law without an allotment, and descriptions of which have been recorded in the clerk's book of record, shall be held in commmon by the Seneca and Tonawanda nations, respectively, and be subject to the control of the council thereof. The common land shall not be appropriated by any Indian to his own use without the consent of the council, who shall, on application, allot to any Indian or Indian family so much of the common lands as they shall deem a reasonable and equitable proportion in reference to the whole number not possessing land. A description of the land desired shall be submitted to the council. Upon the approval of the council, certified by the presiding officer and clerk thereof, such description may be recorded in the clerk's book of records. The possessors of land on the Allegany, Cattaraugus, and Tonawanda reservations, descriptions of which are recorded, may maintain suits for trespaas thereon.

Section 57 relates to Indian trespasses on common land and provides that if any Indian of the Seneca or Tonawanda nation shall occupy any of the common lands of his nation without having obtained from the council an allotment thereof as required by law he shall be removed by the marshal.

Section 58 relates to encroachments by Indians on occupied lands and provides for the removal of the trespassers.

Section 59 is intended to protect timber on the reservations and provides punishment for unlawful cutting.

Section 70, article 4, confirms the nationality of these Indians by declaring that—

> The Seneca Indians residing on the Allegany and Cattaraugus reservations shall, subject to the limitations provided by law, hold and possess such reservations as a distinct community.

Section 71 declares that those parts of the Allegany Reservation included in the villages of Vandalia, Carrollton, Great Valley, Salamanca, West Salamanca, and Red House, as surveyed, located, and established pursuant to an act of Congress approved February 19, 1875, have been constituted parts of the several towns within which they are located, and all the general laws of the State are extended over and apply to the same, except that this section shall not authorize the taxation of any Indian or the property of any Indian not a citizen of the United States. Lands in such villages held under lease from the Seneca Nation, and which the holders thereof are entitled to have renewed by virtue of such act of Congress, shall be for all purposes considered a freehold estate, and the right of dower and tenancy by the courtesy shall attach thereto, and such lands, upon the intestacy of the holder, shall descend, the same as a freehold of inheritance. But the rights of the Indians in such leases shall descend as provided by the laws of the Seneca Nation of Indians.

[20] Sections 72 and 73 define the general powers and duties of the president and of the council.

Section 74 provides for the appointment by the governor of an attorney for the Seneca Nation, and defines his duties.

Sections 75, 76, and 77 relate to vacancies in elective offices, payment of annuities, and policemen at annual fairs, respectively.

ADDITIONAL FACTS AND INFORMATION RELATING TO THE ALLEGANY AND CATTARAUGUS RESERVATIONS.

The United States Indian agent having been called upon, by letters of November 15 and 24, 1894, for certain information respecting the reservations aforesaid, he reported, January 7, 1895, substantially as follows:

(1) That the names of the towns (or "villages," as they are termed by the act of Congress approved February 19, 1875, 18 Stats. 330 and their approximate acreage on the said reservations are as follows: Vandalia, 240 acres; Carrollton, 2,200 acres; Great Valley, 260 acres; Salamanca, 2,000 acres; West Salamanca, 750 acres, and Red House, 40 acres. The number of lots in each reservation could not be ascertained without a great deal of investigation. All of said villages are on the Allegany Reservation.

(2) The approximate value of improvements in each of said villages is as follows: Vandalia, $8,000, value of lots, $6,000, exclusive of railroad property; Carrollton, $30,000, value of lots, $25,000; Great Valley, $20,000, value of lots, $20,000; Salamanca, improvements, exclusive of railroad property, $1,200,000, value of lots, $300,000; West Salamanca, improvements, $50,000, value of lots, $50,000; Red House, improvements, $10,000, value of lots, $8,000.

(3) The assessed and market value of lands surrounding the Allegany and Cattaraugus reservations are approximately as follows: On the north side of the Allegany Reservation, market value, $8 per acre; assessed value, $4 per acre. On the south side of the Allegany Reservation, market value, $4 per acre; assessed value, $2 per acre. The lands surrounding the Allegany Reservation from Salamanca west to the end of the reservation are of but little value, especially the lands upon the south side of the Allegany River. The lands surrounding this reservation are principally mountainous and only valuable for the timber, the greater part of which has been taken off. The reservation lands, if cultivated and improved, would be very valuable, as they are as fertile as any lands in the State with proper cultivation. The most of the lands on the reservation have been allowed to grow up to brush, alders, and such other vegetable growth as is indigenous to low and fertile lands.

The lands surrounding the Cattaraugus Reservation are generally valuable. They are within the grape-belt and fruit-growing section of western New York, and the most of them are well improved and cultivated. The market value of lands surrounding the Cattaraugus Reservation averages $40 per acre and the assessed value $20 per acre. A large portion of the lands within this reservation would be equally valuable, if cultivated and improved, as the lands surrounding it, but a large portion has been allowed to grow up in brush and second growth timber, and has been of but little benefit to the Indians.

(4) The names of railroads on each reservation, the distance each traverses the reservations, respectively, and the value of the property of each, respectively, are as follows:

[21] ALLEGANY RESERVATION.

New York, Lake Erie and Western Railroad, 30½ miles of track, including 15½ miles siding, buildings, and telegraph line.....	$450,000
Buffalo, Bradford and Pittsburg Railroad, 4 miles of track and telegraph line.....	38,000
New York, Pennsylvania and Ohio Railroad, 22 miles of track, including sidings and buildings.....	271,000
Buffalo, Rochester and Pittsburg Railroad, 7½ miles of track and buildings.....	121,000
Allegany and Kinzna Railroad, 1½ miles of track, including sidings.....	4,800
South Vandalia and State Railroad, 1½ miles of track, including siding.....	4,000
Western New York and Pennsylvania Railroad, 29½ miles of track, sidings, and buildings.....	199,500
Total value of railroad property on reservation.....	1,088,300

CATTARAUGUS RESERVATION.

Western New York and Pennsylvania Railroad, 1½ miles of track, siding, and depot.....	21,500
New York, Chicago and St. Louis Railroad, 1 mile of track, siding, and tank.....	28,000
Lake Shore and Southern Michigan Railroad, 1½ miles double track, siding and buildings.....	65,000
Total value of railroad property on reservation.....	114,500

(5) The white population in each of the above-named villages is as follows: Vandalia, 200; Carrollton, 500; Great Valley, 500; Salamanca, 4,000; West Salamanca, 500, and Red House, 25.

(6) The election on the allotment question was held upon the Cattaraugus Reservation on the 16th day of January, 1894, a petition having been circulated by the Woman's Christian Temperance Union, composed of Indian women. The result of the election was 40 in favor of citizenship and allotments and 200 against.

No election or formal expression of opinion has been had upon the Allegany Reservation upon this question.

CONCLUSIONS AND RECOMMENDATIONS.

I have given in the foregoing pages such information respecting the New York Indians as I have deemed to be in anywise material and as I have been able to derive from sources believed to be reliable. This information has been taken to a great extent from reports of the United States Indian agents in charge of the Indians from decisions of the United States Supreme Court, from decisions of the State courts of New York, and from the report of the special committee to investigate the Indian problem of the State of New York appointed by the assembly of 1888. Owing to the fact that this office has not been enabled to examine the official records of the State of New York in verification, I can not vouch for the entire accuracy of all the matters and facts above stated. I can only recommend reliance upon them in general, because of the sources from which they have been obtained.

These matters and facts clearly establish, I believe, the fact that the Ogden Land Company has a valid existing right and interest in the Allegany and Cattaraugus and in a portion of the Tuscarora Indian reservations. The

extent or quantity of this interest seems to be fully recognized by the courts and by the legislature of the State of New York, but the value of the interest is unfixed and undetermined, and does not, I believe, admit of definite ascertainment. It is, and always has [22] been, a bare, unprotective interest, yielding absolutely nothing to its owners, and it is hardly within the range of possibility that it ever will yield anything in any manner except by its absolute sale to the Indians, or until they shall cease to occupy the lands as a tribe. The fact that these Indians are steadily increasing in number, and the further fact that they know that their continued occupancy is dependent upon the continuation of their tribal relation, must entirely preclude the belief that the company can ever hope to derive any benefit or profit on account of abandonment by the Indians. The knowledge of the Indians that severance of their tribal relations means immediate enforcement of the claims of the company is, as has been heretofore stated, the principal reason why they have not wanted to take allotments and become citizens.

Adverting to the question of the value to the company of their interest in these lands, I find in the files of this office a letter dated Alandar, Mass., September 22, 1892, from Mr. Philip C. Garrett, of the board of Indian commissioners, in which he states that at the suggestion of this office he had recently called upon Mr. Appleby, trustee of the Ogden Land Company, with the view to ascertaining the terms upon which the company would part with its interest in the Seneca lands; that Mr. Appleby spoke with apparent candor and said the company was very desirious of making such a sale; that as to the price, he estimated the land to be worth $40 to $50 per acre, not taking Salamanca and other populous settlements into account; that the company's price was

based upon $5 per acre for its fee, which would mean about $280,000. Mr. Garrett, continuing, stated that upon being pressed further Mr. Appleby said the company would take $200,000, and would not take less; that this, states Mr. Garrett, is the price the company consented to accept years ago, when a similar negotiation was set on foot.

The conclusion seems to me to be irresistible that the first and most essential thing to be done in the solution of the New York Indian problem is the extinguishment of the claim of the Ogden Land Company. This being accomplished, the allotment of their lands in severalty, the conferring of full citizenship upon the Indians, the repeal of all special State laws (with certain exceptions) relating to Indians, and their absorption into the body politic of the State, should easily and speedily follow. They would then be placed on the plane of those around them, with all the privileges and liabilities of citizenship and law, with the exception, perhaps, that some restriction should be placed upon the alienation of such land as they may acquire by allotment in severalty.

To these ends I have the honor to recommend that Congress be asked to enact such legislation as will enable the Secretary of the Interior to negotiate, in a manner to be prescribed by him, with the Ogden Land Company, so called, for the relinquishment of the claims in and to the Indian lands in question, the result of such negotiation to be reported to Congress for such action thereon as may be deemed advisable. It is also recommended that an appropriation of $2,500 be asked for, to be used in defraying such expenses as may be found necessary in said negotiation.

Very respectfully, your obedient servant,

D. M. BROWNING,
Commissioner.

The SECRETARY OF THE INTERIOR.

APPENDIX F(14)

House of Representatives
Report No. 2591

HOUSE OF REPRESENTATIVES.

57TH CONGRESS, *1st Session.* } { REPORT No. 2591.

ALLOTMENT OF LANDS AMONG NEW YORK INDIANS.

JUNE 18, 1902.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed.

Mr. CURTIS, from the Committee on Indian Affairs, submitted the following

REPORT.

[To accompany H. R. 12270.]

The Committee on Indian Affairs, to which was referred the bill (H. R. 12270) to provide for the allotment of lands in severalty to Indians in the State of New York and to extend the protection of the laws of the United States and of the State of New York over such Indians, and for other purposes, makes the following report and recommends that the bill do pass with amendments:

The legislation proposed in this bill has been repeatedly recommended by Commissioners of Indian Affairs. It has been requested by the legislature of the State of New York, after an exhaustive examination by a

committee from that body; by a majority of the Board of Indian Commissioners; by the Indian agent for the State of New York, and by a large number of prominent men of that State.

There are more than 5,000 Indians in the State of New York living upon reservations and holding their lands in common. Their domestic relations and their property rights are not subject to the laws of the State of New York. Trivial offenses which should be settled by justices of the peace are taken into the United States courts. In the year 1899 more than $20,000 was paid by the United States for witness fees in cases relating to the Indians of New York. It is also urged that there is great necessity for extending the laws of the State of New York over their property and marriage relations.

It has been the policy of the Government for many years to allot lands in severalty, and this system has been productive of excellent results among the Western Indians. The Indians of the State of New York have been surrounded by civilization for nearly a century. A majority of them are intelligent, and quite a percentage are industrious and cultivate their lands. It is believed that if the individual Indian could own his own land in fee, a large number of their young men would take up and cultivate their vacant lands.

[2] These Indians were exempted from the provisions of the Dawes Act of 1887 and from other allotment acts for the reason that their title is defective. The Ogden Land Company, so called, of New York, claims to hold the fee title and preemption right to these reservations, subject to the perpetual tribal occupancy of the Indians. The Indians concede that the land company has the right of preemption, but deny that such company holds the fee. Whichever of these contentions is true, no breaking up of tribal relations and allotments of their lands can take place while the claim of the land company exists.

The Indians of New York are soon to be paid $2,000,000, arising from a judgment against the Government in their favor in the so-called Kansas claims. The bill provides that a portion of this money, not exceeding $200,000, shall be used by the Secretary of the Interior for the purchase of the land company's claim. This money will come back to the Indians from the sale of the lands on those reservations occupied by white people. These white residents are living upon these lands under ninety-nine-year leases authorized by act of Congress. These leases have something over ninety years to run, and the holders thereof have the right of renewal. This bill permits these white leaseholders to obtain title in fee to their property upon the basis of capitalizing their rents at 4½ per cent. The white leaseholders are also obliged by this bill to pay a portion of the Ogden Land Company's claim. Such portion will amount to about $20,000, and the total amount received from the sale of the lands and the portion of the Ogden claim paid by the white residents will amount to about $200,000, or the maximum amount required to purchase the Ogden title.

No breaking up of tribal relations and allotting of lands is ever likely to take place among these Indians until the title of the reservations is perfected, as the 8,000 white residents thereon, the three railroads, and the Indians themselves will strenuously oppose such action, for fear that it wold perfect the title of the land company.

It is more than likely that a part of the $2,000,000 to be paid to the New York Indians will be wasted if paid at one time, and your committee believes that $200,000, or so much thereof as is necessary, will be well expended in wiping out the cloud which the Ogden land claim casts upon the lands covered by this bill. More than one-half of this great sum belongs to Indian children under 18 years of age. There is no law at present for the protection of

their interest. This bill provides that their money shall be paid out under the laws of the State of New York, and the protection of the surrogates' courts is extended to them.

The State of New York is expending annually more than $100,000 for schools, asylums, hospitals, roads, and bridges for the benefit of these Indians. Their reservations extend for miles through highly civilized communities and are a blot upon their civilization. It has a right to ask, as it has through legislative action, that the Indians upon these reservations be put upon the road toward being self-supporting citizens of the State.

Your committee is unanimously of the opinion that the consent of the Indians should be obtained to the allotment of their lands in severalty, and the bill has been amended providing that the consent of a majority of the Indians shall be obtained under the rules and regulations of the Department of the Interior.

[3] The committee recommends that the bill pass with the following amendments:

Page 1, line 3, after the word "that," insert "after the consent of a majority of the Indians, hereinafter mentioned, shall have been obtained to such allotment."

Page 2, strike out from word "upon," line 10 to word "act," line 14, inclusive, and insert "after the consent of a majority of said Indians to said allotment has been obtained," in lieu thereof.

Page 3, line 11, strike out, "over 18 years old."

Line 12, strike out from the word "plus" to the word "allotment," line 14, inclusive.

Line 16, strike out "over 18 years of age."

Line 18, strike out from the word "and" to the word "share," in line 20, inclusive.

Page 7, line 9, after the word "area" insert "and also the lands used and occupied by the Presbyterian Board of Missions."

Page 7, line 11, strike out the word "one" and insert the word "two" in lieu thereof.

APPENDIX F(15)

Congressional Record—House, August 14, 1950 [12453]

* * *

CONFERRING CERTAIN JURISDICTION ON THE COURTS OF THE STATE OF NEW YORK

Mr. McSWEENEY. Mr. Speaker, by direction of the Rules Committee, I call up House Resolution 747 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

Resolved, That immediately upon the adoption of the resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (S. 192) to confer jurisdiction on the courts of the State of New York with respect to civil actions between Indians or to which Indians are parties. That after general debate, which shall be confined to the bill and continue not to exceed 1 hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Public Lands, the bill shall be read for amendment under the 5-minute rule. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted and the previous question shall be considered as ordered on the bill and amendments therto to final passage without intervening motion except one motion to recommit.

Mr. McSWEENEY. Mr. Speaker, I yield 30 minutes to the gentleman from Indiana [Mr. HALLECK] and at this time I yield myself 3 minutes.

Mr. Speaker, House Resolution 747 makes in order the bill (S. 192) to confer jurisdiction on the courts of the State of New York with respect to civil actions between Indians or to which Indians are parties. I believe all of us who have studied the Federal courts realize we should put forth every effort to try to lessen the number of cases that are brought before Federal judges. I am in favor of raising the limit of the amount involved in cases that may come before the Federal courts so as to take them out of the category of being almost what they are, justice of the peace matters.

This particular bill affects only one tribe in New York State. My distinguished colleague, the gentleman from New York [Mr. WADSWORTH], told me that some time ago he had the honor of having the title of chief conferred upon

[12455] * * *

Mr. McSWEENEY. Mr. Speaker, if there are no further requests for time, I move the previous question.

The previous question was ordered.

The SPEAKER. The question is on the resolution.

The resolution was agreed to.

Mr. PETERSON. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (S. 192) to confer jurisdiction on the courts of the State of New York with respect to civil actions between Indians or to which Indians are parties.

The motion was agreed to.

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill S. 192, with Mr. YOUNG in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

Mr. PETERSON. Mr. Chairman, I yield myself 3 minutes.

Mr. Chairman, I will make this preliminary statement brief because I will be followed by the distinguished author of the bill, the gentleman from New York [Mr. REED], in whom the House has great confidence. The gentleman from New York is thoroughly familiar with this problem which affects his district. It has the support of both parties on the committee and has already been passed by the other body.

Mr. Chairman, when we get into any Indian problem and try to place them under the jurisdiction of State laws, we always run into certain troublesome problems. The committee has worked hard on this bill, and has tried to protect the rights of the Indians. Even though the committee has held extensive hearings, the gentleman from Oklahoma, chairman of the subcommittee, has drafted certain amendments which he will offer in a further attempt to protect the rights of the Indians. I think he has covered the situation pretty well.

Briefly, the bill does this: It provides that the courts of the State of New York shall have jurisdiction in civil actions and proceedings between Indians, or between one or more Indians and any other person or persons, to the same extent as the courts of the State shall have jurisdiction in other civil actions.

But you will note how far we have gone in an effort to protect the treaty rights of the Indians. The bill provides as follows:

Provided, That the governing body of any recognized tribe of Indians in the State of New York shall have the right to declare, by appropriate enactment within one year from the date of this act, those tribal laws and customs which they desire to preserve, which, on certification to the Secretary of the Interior by the governing body of such tribe shall be published in the Federal Register and thereafter shall govern in all civil cases involving reservation Indians when the subject matter of such tribal laws and customs is involved or at issue: *Provided further,* That nothing in this act shall be construed to require any such tribe or the members thereof to obtain fish and game licenses from the State of New York for the exercise of any hunting and fishing rights provided for such Indians under any agreement, treaty, or custom: *Provided further,* That nothing herein contained shall be construed as subjecting the lands within any Indian reservation in the State of New York to taxation for State or local purposes, nor as subjecting any such lands, or any Federal or State annuity in favor of Indians or Indian tribes, to execution on any judgment rendered in the State courts, except in the enforcement of a judgment in a suit by one tribal member against another in the matter of the use of possession of land: *And provided further,* That nothing herein contained shall be construed as authorizing the alienation from any Indian nation, tribe, or band of Indians of any lands within any Indian reservation in the State of New York.

SEC. 2. This act shall take effect 2 years after the date of its passage.

Mr. MILLER of Nebraska. Mr. Chairman, I yield 10 minutes to the gentleman from New York [Mr. REED].

Mr. REED of New York. Mr. Chairman, I am very proud of the fact that I have the honor to represent here in the Congress of the United States the Seneca Nation of Indians who are in my district.

The Federal Government has never owned any of the Indian lands in the State of New York. From the very earliest days way back in times when land was granted to the Duke of York by Charles the Second, the State of New York has legislated for the Indians. The Seneca Nation of Indians of New York are fine people; they have been well cared for by the State of New York. I can say without fear of successful contradiction that no State in the Union has appropriated so much money as the State of New York for Indians within the boundaries of the State. I have before me a table which I inserted in the RECORD when another bill relating to Indians was before the House, but I think you will be interested to know that the State of New York during the period from 1911 to 1950, or during the past 39 years, has spent for Indian welfare a total of $15,369,213.89, or an annual average of $415,384.15. The Federal Government has spent during the same period of 39 years for the New York [12456] State Indians a total of $321,900, or an annual average of $8,700.

The purpose of the State of New York is to educate these fine Indians to the point where they can enjoy the same privileges in every respect and have the same fine graded schools as the white people. Now we want to go a step further and protect their interests further by saying that they may have the opportunity of going into our State courts on civil matters. The educated Indians, who are the majority in the tribe, of course, are anxious to have this privilege of going into the State courts. Under S. 192 they can go into the county courts, they can go

into the supreme court, which would be comparable to the circuit court of appeals in most States, and they could take an appeal to the appellate court at Rochester, N. Y., and from the appellate court to the court of appeals, if dissatisfied. The Indians want this right and the State of New York now wishes to give it to them.

Mr. McSWEENEY. Mr. Chairman, will the gentleman yield?

Mr. REED of New York. I yield.

Mr. McSWEENEY. Is it not true that the State of New York is willing to accept the added responsibility of paying for this? It will, therefore, be an economy for the Federal Government if we let them.

Mr. REED of New York. It will be a matter of economy, surely. Some things that occur under the present system are very unfortunate. I have had correspondence with the educated Indians, and they are in favor of this bill. There is, of course, an element among the Indians the same as there is amongst the white people, a few elements who are more or less lawless, and who commit crimes of one kind or another, people who should be subjected not only to criminal action but to civil action as provided for in S. 192. The educated people want recourse to honest courts, and that is what this bill provides. Certain amendments have been proposed to which I shall make no objection. On the whole, S. 192 is a sound bill.

Mr. MILLER of Nebraska. Mr. Chairman, will the gentleman yield?

Mr. REED of New York. I yield.

Mr. MILLER of Nebraska. I remember at one hearing before the Committee on Public Lands there was not only a group of Senecas but groups of other Indians who were objecting quite firmly to this bill. They said they had certain treaties made at the time of George

Washington, in the early colonial days in the Revolutionary War period and that they did not want to be brought under the laws of the State of New York because they had certain tribal customs, unwritten laws, and other things peculiar to this Indian tribe which they felt the courts of the State of New York would throw overboard should they come under the laws of the State of New York.

I remember that at that time I said to one of them that they had the fullest protection, that they have the privilege of society, that they could work in the factories of New York, yet when a member of their tribe commits a crime outside the reservation they want the privilege of running back on the reservation and coming under the tribal customs. The room was full of Indians who objected rather strenuously to coming under this legislation. Perhaps the gentleman from New York, or the gentleman from Oklahoma [Mr. MORRIS], can throw a little light on this proposition and whether the amendments suggested by the committee will take care of some of their objections.

Mr. REED of New York. I want to say to the gentleman, the distinguished Member of Nebraska, that I have letters that show some of these problems. Here is a letter from an Indian mother who says she is writing to let me know the need for the civil-rights bill to be passed. She writes that last July 22, 1950, there was a peace court held on the Cattaraugus Reservation which ended in bloodshed, that no decision was reached or rendered. Then she goes on to cite the case where the husband of Mrs. _____ was killed and the only child of Mr. _____ was dispossessed and the property given to a third person who was not related at all to Mr. _____ and then Mrs. _____ and her children were left homeless and are now on relief.

Another case was that of a woman who after living 22 years on a piece of property to which she had a life lease was dispossessed. She was hopelessly ill, and, of course, had to be taken care of by the New York State Welfare Organization.

I only mention those things to show the inadequacy of the present system to protect the law-abiding Indians of the State of New York, and we are legislating here for the law-abiding people, the law-abiding Indians. The Seneca Indians are fine people. Take, for instance, the Thomas Indian School. We have appropriated over $5,000,000 to that one school alone. We have appropriated $626,615.16 for district schools throughout the reservation.

Mr. MILLER of Nebraska. Mr. Chairman, will the gentleman yield?

Mr. REED of New York. I yield.

Mr. MILLER of Nebraska. I am inclined to agree with the gentleman that this bill ought to be adopted, but does the gentleman think that in adopting this bill it is going to abrogate treaties that have been entered into and followed down through the years, treaties of the United States which have been in existence all these years? Does it change them? Does it change the unwritten law and the tribal customs, and so forth?

Mr. REED of New York. This is the fundamental proposition. Neither the New York State Legislature nor its courts can change treaties because treaties are the supreme law of the land, naturally.

Mr. MILLER of Nebraska. It is claimed that this bill will change those treaties.

Mr. REED of New York. It will not. I did not intend to go into this matter; however, you have a very active lobbyist here who has gone up there and made speeches and inflamed certain groups of the Indians, telling them a lot of things which are absolutely false.

Let me draw a little picture of what has happened. Here you have a bill on which you had hearings before the Interior and Insular Affairs Committee of the Senate. The bill had full hearings. The Indians were there. Most of the chiefs of the State of New York were there. The committee reported this bill (S. 192) unanimously. The bill then went to the floor of the Senate and was passed unanimously. Theoretically at least, 96 Senators agreed to the bill. Twelve members of a committee in the Senate had agreed to it.

The bill came over here and went to the Public Lands Committee, a committee made up of 28 outstanding, able Members of this House. Hearings were held. When it was all over, some amendments were made to the bill and it was unanimously reported to the House.

Do you know what happened? There were some objections made when the bill was put on the Consent Calendar. That, of course, in a sense thwarted the will of the entire Senate, the Senate committee and the Public Lands Committee of the House. Now we have a rule and the rule comes in here with the unanimous support of the members of the Rules Committee. They examined into the provisions of this bill S. 192. We have our objectors on each side of the aisle, the Democratic objectors and the Republican objectors. They have examined the bill and it was approved by all of them. What I am here for under the rule is to explain a bill that carries out the will of the House and the Senate.

Mr. CANFIELD. Mr. Chairman, will the gentleman yield?

Mr. REED of New York. I yield to the gentleman from New Jersey.

Mr. CANFIELD. As one who was born in Salamanca, N. Y., in the gentleman's district, I shall be happy to support this bill. However, that is not the main reason.

The real reason I support this bill is because I have extraordinary confidence and faith in the gentleman's approach to his assigments here. I consider him one of the outstanding statesmen of our day.

Mr. REED of New York. I thank the gentleman for his remarks. I cannot plead guilty to his complimentary remarks, although it sounds well.

Mr. Chairman, the rules of procedure relating to bills placed on the Consent Calendar of the House of Representatives ought to be changed to protect meritorious legislation from defeat at the hands of one objector. Even a bill passed over without prejudice on a call of the Consent Calendar requires but one objection when next reached. A bill, however, objected to during consideration of the Consent Calendar, but retaining its place by unanimous consent, requires three objectors when again called.

The rule as it now stands plays directly into the hands of those who may have a selfish interest in killing the legislation. There are unscrupulous lobbyists who are not unmindful of the infinite and remunerative possibilities of this [12457] rule. It is a rule that also often proves very expensive to the taxpayers. Once a lobbyist through his influence has a bill, which he has been retained to defeat, stricken from the calendar, the author of the bill must then obtain a rule from the Rules Committee to bring the bill to the floor of the House for consideration, which takes time and involves great expense to the taxpayer. Furthermore, it retards other legislation. Let me illustrate the point. Here is a Senate bill 192. The Committee on Interior and Insular Affairs, a committee composed of 12 distinguished Senators, held a full and fair hearing on the merits of the bill, S. 192.

It was reported unanimously by the Committee on Interior and Insular Affairs to the Senate. The bill, S. 192, was considered in the Senate, composed as it is of 96 Members, and passed unanimously. The bill was then messaged to the House and duly referred to the Committee on Public Lands of the House, a committe composed of 28 members of marked ability, which held exhaustive hearings, after which the bill was reported favorably and unanimously. The able chairman of the Public Lands Committee placed the bill on the Consent Calendar of the House to expedite its passage.

When the Consent Calendar was called and the bill reached, one Member arose and objected. The next time the Consent Calendar was called and the bill reached, there were three objectors, which action struck the bill from the Consent Calendar.

Under the rule, it will be observed, three members were empowered to block legislation which already had received the unanimous approval of a Senate committee of 12 Senators, the unanimous approval of 96 Senators in the Senate, and the unanimous approval of the 28 members of the Public Lands Committee of the House. Thus, 3 Members of the House under the rule were able to thwart the bill, the judgment and the wisdom of 124 Members of the Congress.

This is not all. To bring this Senate bill to the floor of the House for final action, the chairman of the Public Lands Committee had to appear before the Rules Committee, composed of 12 Members of the House, and ask for a rule to bring the Senate bill 192 to the floor, which committee unanimously granted the request for a rule for the consideration by the House of the Senate bill 192.

Such dilatory tactics, such obstruction to honest legislation runs into a total expenditure to the taxpayers of many thousands of dollars.

The rule which suffers and permits such dilatory and expensive tactics should be changed to require at least five objectors to strike a bill from the Consent Calendar instead of three under the present rule.

[From the Salamanca (N. Y.) Republican-Press of August 8, 1950]

ONE MAN PREVENTS VOTE ON INDIAN LEGISLATION

The objection of one man, Representative O'SULLIVAN, Nebraska Democrat, yesterday prevented the House of Representatives from voting on the Ives bill to make Indians residing in New York State subject to the civil jurisdiction of the courts of this State.

Had the House been permitted to vote, the bill undoubtedly would have passed, completing congressional action on legislation to remove a serious handicap under which New York Indians now labor.

That such action could be blocked by the objection of one man coming from a far distant State, provides an example of the weird situations that sometimes result from the American system of government of the people, by the people, for the people.

Here is a bill representing the best thought, after prolonged study, of the Indian Bureau of the United States Department of the Interior and of the Legislature of the State of New York. It has been the subject of extended hearings before a committee of the United States Senate, approved by that committee and passed by the full Senate, with the support of both the New York Senators—IVES, Republican, and LEHMAN, Democrat. It follows, as Senator IVES said in presenting it to the Senate, "in logical sequence from the action of the last Congress in making State criminal laws

enforceable against Indians"—a change which has worked out to the satisfaction of the Indians themselves as well as the general public.

"The present uncertainties of existing Indian legal status seriously handicap the Indian in the conduct of his daily affairs." Senator IVES reminded the Senate in explaining the need for such legislation. "A majority of Indians in New York seek employment outside the boundaries of their reservations. In so doing, they are hindered by any employer's all too understandable reluctance to hire anyone against whom he may have no legal recourse. Contracts entered into by Indians are not enforceable in the State courts. Furthermore, tribal customs and laws fail completely to provide a stable foundation on which the fundamental institutions of family and property can be based. Domestic relations show the worst effects of lack of socially desirable standards of conduct. Marriages are terminable by any Indian male at will; no regard is evidenced by tribal custom for the hapless plight of the deserted Indian wife. Problems of inheritance of property, in the absence of any formalized and orderly procedure, often are solved by the traditional 10-day feast distribution. Under this means of disposition, the immediate family of the deceased is frequently left penniless while distant clan brothers receive his property. This bill is a continuation of the process of orderly development of Indian affairs, and it represents a further constructive step in the direction of assumption by the Indian of the full responsibilities of citizenship."

Yet important as this legislation is, and in spite of the fact that it is an essential part of the program of the United States Indian Bureau, the objection of a single individual prevents a vote by the House of Representatives.

Fortunately this is not the whole story, however. The bill was brought up yesterday on what is known as the Consent Calendar—a device for quick enactment of bills to which there is no opposition. To prevent the thwarting of the will of the House by one Member, or a small minority, the rules provide that a bill can be put before the House for a vote through action by the Rules Committee. Representative DANIEL A. REED, of this district will seek such a rule from the committee. In view of the fact that the bill is favored by the Indian Bureau, and therefore is to a certain extent an administration measure, it does not seem probable that the Rules Committee will turn down Mr. REED's request that the House be permitted to vote on the bill.

Expenditures by the State of New York for Indian welfare, fiscal years ending 1911 to 1930

Fiscal years ending June 30—	Indian agents and attorneys	Educational			Social welfare		Highways and bridges		Annual total
		Thomas Indian School	Reservation schools	Agricultural extension work	Medical and nursing	Maintenance of Indian poor	Maintenance and repair	New construction	
1911	$1,065.00	$41,022.37	$12,031.00	----------	$300	$3,877.83	$87,750.00	$66,703.00	$140,077.10
1912	1,065.00	44,674.42	10,949.29	----------	300	2,186.37	30,182.60	----------	196,180.08
1913	1,065.00	55,962.80	15,537.13	----------	300	1,711.07	70,655.00	----------	150,401.00
1914	1,065.00	46,101.47	16,188.03	----------	300	6,854.53	40,088.60	134,304.29	244,646.20
1915	1,065.00	47,856.15	20,000.00	----------	1,200	5,599.31	40,495.66	53,765.34	170,631.16
1916	1,065.00	43,909.29	17,705.74	----------	1,200	5,664.23	40,814.56	72,037.02	185,176.73
1917	1,065.00	60,641.60	16,188.00	----------	1,200	8,902.50	51,398.33	----------	147,196.44
1918	1,065.00	70,318.45	22,960.00	----------	1,200	8,348.70	62,304.53	----------	166,227.37
1919	1,065.00	74,879.66	21,945.00	----------	1,200	7,423.92	82,164.74	----------	188,128.62
1920	1,065.00	107,390.08	23,495.00	----------	1,200	6,192.36	62,341.36	----------	201,683.79
1921	1,065.00	110,514.63	27,625.00	$10,000	1,200	8,028.35	63,626.71	140,026.04	361,986.73
1922	1,065.00	103,630.50	28,625.00	6,000	1,100	6,543.21	66,071.26	408,253.77	625,719.34
1923	1,065.00	95,868.44	40,875.00	6,000	1,200	10,725.82	110,485.05	----------	265,347.11
1924	1,065.00	106,571.16	41,700.00	6,000	1,200	12,401.25	65,340.49	----------	233,498.90
1925	1,065.00	110,039.00	30,500.00	6,000	1,200	15,815.77	104,735.93	----------	269,356.04
1926	1,065.00	122,668.30	42,000.00	6,000	1,200	19,210.94	81,337.39	----------	273,481.63
1927	1,065.00	137,198.00	49,400.00	6,000	1,200	22,230.86	100,855.03	----------	317,948.89
1928	1,065.00	126,663.50	51,400.00	6,000	1,200	27,043.04	71,812.04	322,563.48	607,747.06
1929	1,065.00	130,170.30	58,875.00	6,000	1,200	31,262.70	79,108.97	130,128.60	437,810.57
1930	1,065.00	201,176.00	50,875.00	6,000	1,200	43,000.00	80,000.00	----------	383,316.00
Total	21,918.00	1,849,978.72	635,615.16	64,000	71,000	253,308.37	1,444,677.97	1,380,476.33	4,714,665.55

[12458] *Expenditures for the State of New York for Indian welfare, fiscal years ending 1931 to 1947*

Fiscal years ending June 30—	Thomas Indian School	Educational purposes	Attorneys, agents, etc.	Maintenance of Indian poor [1]	Capital improvements, repairs, etc.	Annual total
1931	$195, 220. 00	$55, 941. 47	$6, 042. 72	$72, 705. 28	$39, 138. 94	$369, 048. 41
1932	172, 674. 67	68, 523. 59	38, 198. 20	94, 806. 81	8, 902. 26	377, 106. 53
1933	178, 354. 94	74, 151. 88	13, 450. 75	112, 495. 93	17, 807. 18	396, 260. 68
1934	141, 246. 30	77, 720. 73	27, 724. 15	92, 951. 08	10, 549. 08	350, 191. 34
1935	151, 710. 28	78, 298. 50	21, 732. 91	100, 828. 00	2, 100. 25	354, 670. 03
1936	146, 039. 99	82, 724. 65	19, 419. 25	113, 728. 00	64, 805. 34	426, 717. 23
1937	153, 807. 91	80, 068. 05	28, 956. 08	107, 989. 00	69, 514. 51	440, 254. 45
1938	170, 379. 43	80, 359. 15	15, 885. 72	91, 292. 00	65, 218. 03	423, 134. 33
1939	198, 413. 59	88, 559. 23	20, 409. 37	93, 577. 00	40, 076. 01	438, 035. 20
1940	170, 320. 13	88, 321. 37	29, 160. 79	139, 962. 00	61, 804. 05	489, 568. 34
1941	169, 183. 41	98, 038. 58	23, 092. 88	112, 238. 00	25, 242. 90	427, 795. 77
1942	177, 111. 00	103, 719. 47	24, 009. 90	105, 150. 00	6, 459. 05	416, 448. 52
1943 [2]	133, 787. 60	79, 299. 67	15, 356. 67	[3] 81, 184. 00	139. 83	309, 767. 77
1944	174, 524. 68	74, 643. 59	21, 302. 00	90, 371. 00	79. 01	361, 010. 28
1945	223, 066. 63	122, 282. 51	20, 434. 87	89, 344. 00	----------	455, 727. 71
1946	231, 188. 81	147, 372. 44	21, 087. 79	88, 314. 00	7, 449. 05	495, 410. 09
1947	259, 387. 89	171, 198. 90	20, 804. 56	111, 104. 00	18, 897. 61	581, 393. 96
1948	322, 367. 11	211, 481. 06	20, 482. 10	137, 642. 00	3, 419. 50	695, 391. 77
1949	308, 697. 94	269, 222. 27	20, 252. 31	181, 694. 00	3, 635. 82	843, 512. 34
1950	360, 623. 04	349, 961. 07	19, 850. 73	[3] 235, 603. 00	22, 157. 75	997, 195. 59
Total	4, 107, 709. 44	2, 404, 826. 27	424, 724. 35	2, 249, 859. 10	467, 398. 18	9, 654, 548. 34

[1] Figures furnished by department of social welfare.
[2] Covers 9 months only due to change in fiscal year.
[3] Received from department of social welfare and includes estimated expenditures for March 1950.

The CHAIRMAN. The time of the gentleman from New York has expired.

Mr. PETERSON. Mr. Chairman, I yield 5 minutes to the gentleman from Nebraska [Mr. O'SULLIVAN].

Mr. O'SULLIVAN. Mr. Chairman, I objected to this bill every time it was sought to be passed. Since my initial objection to it there have been two committee amendments proposed and adopted which removed a great deal of the objections which I have to the proposed legislation. I do not have any apologies to make to anyone for having opposed the measure first, last, and all of the time. I did so because I thought it was very improperly proposed legislation for several very good reasons.

It has been suggested heretofore, and no doubt will be mouthed today that I have been induced to do what I have done for these Indians, because of the solicitation

of a lawyer who is a registered lobbyist. That is not true, because whether you know it or not, I have dedicated much of my legal life to the causes of the poor, the helpless, and the oppressed. If, however, a lobbyist had my ear on this matter, then thank God he is working for the unfortunate, oft-mistreated Indians of the Iroquois assembly. If I must be branded as a cat's-paw for a lobbyist, I am so grateful that it is in the cause of the poor, the oppressed, and the helpless, instead of the opposite category. In the practice of law, I was known as the counsel for the indigent, and it seems that I am proceeding in true stride now as a spokesman from a far-away place for helpless Indians. I know that this bill will be passed almost unanimously but I shall vote against it, nevertheless, because I have always felt that a great poet—Lowell—was right when he said:

He is a slave who dare not be in the right with two or three.

A number of years ago when I was a younger man I was here in Washington to try a case before the then Secretary of Agriculture. With me, at that time, was a very able Omaha lawyer. He insisted that he had to come over to the House of Representatives to watch the progress of a certain bill, which he explained to me would absolutely take his client out of the criminal category by retroactive legislation which proposed to forgive an alleged criminal act which had been committed at a prior time. We sat right up there in the House of Representatives. While he swore under his breath at the mangy Congressman who was to introduce and put over the legislation, he explained to me that his client had exhausted all of his remedies in the courts and now a law had to be passed to forgive that which had been done.

Since I have become a Member of this House of Representatives I have noticed on many occasions legislation like the tidelands bill, the Kerr natural gas

bill, the recent amendment to the Transportation Act, and other instances, where litigants had fought their cases through all of the courts and then when they were finally and decisively beaten, instead of doing that which the honest citizen would do—accept the decision of the court and obey the law—they rush pellmell to the Congress and finally get from the Congress, if they can, that which the law would not permit them to have originally.

This bill arises out of the same situation, as you will find if you will examine into the matter. In Salamanca, N. Y., you find a city that is built entirely upon an Indian reservation. The city pays rental of about $11,000 a year to the Seneca Indians. I have been told that seven large factory sites pay a total rental of $5 a year, and that the average city block in Salamanca, N. Y., pays about 50 cents to $1 per year rental. This has been going on for a long time. As I understand it, there was originally a 50-year agreement, which I do not question, which provided what rentals should be paid.

Prior to 1942, several of the citizens of Salamanca, N. Y., would not pay the agreed rentals. So the Indians tried to enforce payment of same. They would hire a lawyer, but about the time they got the lawyer hired and briefed, somebody for some strange reason would suddenly hire him at a salary and pay him more money and he would quit the case. That went on and on until the Indian department submitted finally to the Department of Justice this matter for action.

A very able lawyer by the name of Aubrey Lawrence, connected with the Justice Department, started a lawsuit to make one Forness pay his lease money. Mr. Lawrence won the case for the Indians in the district court of the United States. He won it also in the circuit court of

appeals. Certiorari was applied for to the Supreme Court and that was denied and thus the end of the trail had been reached.

This decision rendered by the circuit court of appeals in the case of *United States* v. *Forness* (125 Fed. 2d 928), decided in 1942, upset the general theory of the New York State lawyers and in substance held clearly that the claims and rights of the Indians were established clearly by treaties, and that a treaty, like the gentleman from New York [Mr. REED] has stated, along with the Constitution, is the supreme law of the land.

Then immediately these bills resembling S. 192, began to come into being. Since the year 1943 in about every session of the Congress bills like this S. 192, or similar bills were introduced but not one of them got by the scrutinizing eye of the Congress.

The sponsors of such bills, it appears to me, are great believers in the old blurb, "If at first you don't succeed, try, try again."

Everything indicates that we are now on the 1-inch line and greed and injustice is going over the goal quite soon for a touchdown, if the people's great safety man, President Truman, does not stop the ignoble ball carrier with a smacking veto, which I hope he does.

The present bill is wrong in principle because, to use an old Republican "snide expression," it is the camel's head in the tent—it is just a starter to the setting of a bad precedent. This python must go through a series of sliming and swallowing before the carcass can be digested.

To improve the proposed legislation if it does pass Congress, I will offer at the appropriate time an amendment authorizing the law to be submitted to the Indians, under proper procedure for a referendum vote of approval or disapproval of the legislation. The gentleman

from New York, Congressman REED, and other supporters of the bill should not oppose this because they say the Indians want it. I just want to learn if these men really know what they are talking about.

Today our boys are fighting for the right of self-determination in Korea. Why not self-determination for the Seneca Indians?

The gentleman from New York, Congressman REED, talks earnestly about what fine people these Seneca Indians are—about how intelligent and progressive they are. Well why is it not good American doctrine at home to let them—these fine, intelligent, progressive people—have a vote on this new departure law and learn whether they want it or [12459] not. Gentlemen, I test your true Americanism with my amendment. I want to know whether you really believe in the right of self-determination at home like you say you do abroad.

I shall ask for a roll-call vote and a record will be made as to the consistency of every one of us. The people will know exactly where we stand on these matters.

Mr. MORRIS. Mr. Chairman, I yield 5 minutes to the gentleman from Minnesota [Mr. MARSHALL].

Mr. MARSHALL. Mr. Chairman, it is fortunate that we have the opportunity sometimes to present to the Members of the House some of the problems that each and every one of us have with our committees. We have not had nearly enough opportunity to present to the Members of this House some of the problems that come before our committee having to deal with the problems of our brothers, people of American Indian descent. I would like to say to the members of this committee that there are no more loyal citizens of the United States than our first born, our American Indians. They believe heartily in the principles of this Government, and I know of no people

as a group who will fight harder to defend the principles of the great Government than the brothers we have of American Indian descent.

We held hearings on this particular bill. The hearings were long. We gave every witness an opportunity to be heard. The chairman of our subcommittee, the gentleman from Oklahoma [Mr. MORRIS], went into the legislative situation very, very thoroughly, and because of going into the legislative situation very thoroughly he has proposed some amendments which will be offered later in the consideration of this bill. I think those amendments which he will offer will do much to do away with some of the criticism that some people have felt of the bill. I want to say as far as we were concerned, there was almost unanimity of feeling on the Subcommittee on Indian Affairs that we ought to remove restrictions that set aside our Indian brothers in a different category than any of the rest of us. We are going through a long, outdated process of treaties, discrimination, and a maze of obsolete laws. In the time of the early foundation of this country as a safety measure to the residents, it was necessary that some of these Indians be set aside and be treated separately. That time has long since passed. The gentleman from Nebraska [Mr. O'SULLIVAN] spoke to you a moment ago and presented his views. The gentleman is a very thoughtful Member of this House and goes into legislation very thoroughly. But, we do have a provision, I think, in this bill, that will safeguard the landed interests of the Seneca Indians.

For a good many years it was very evident that the State of New York had progressed to the extent that they could very easily take over the civil jurisdiction of these Indians. Long since past we have taken away the Indian Bureau; we have no Indian Bureau office, nor do we want to go back to creating an Indian office in the

State of New York. We want to go right ahead. The Indians in the State of New York are under the criminal laws of the State of New York. The Secretary of the Interior several years ago—the man who is now Secretary of the Interior, Oscar Chapman, who was then Under Secretary—said it was very urgent as a matter of employment and as matter of right and other things in this community that these Indians be placed under the civil laws of the State of New York, for otherwise it would seriously affect the progress we had made. The Indian Office has classified these Indians. They inform us that there is no group of Indians in the United States who are better able to assimilate into the laws of the white man than are those of the State of New York. This is a compliment to the people of the State of New York. There is no segregation there. However, we in the national Congress have to do our part, if we are going to treat these Indian brothers of ours fairly and remove these restrictions and these discriminations, and so on; we are going to have to remove some of these old troublesome laws that are long outdated and set aside these discriminatory practices. That is what we are attempting to do in this bill and this is what your subcommittee on Indian Affairs is attempting to do in the House. We are putting in long hours. We are trying to do something constructive to put these Indians in a position that we no longer say "Indian" but say "American," just the same as we talk about the rest of us as Americans.

The CHAIRMAN. The time of the gentleman from Minnesota has expired.

Mr. PETERSON. Mr. Chairman, I yield 5 minutes to the gentleman from Oklahoma [Mr. MORRIS].

Mr. MORRIS. Mr. Chairman, I shall propose in due order and time two amendments to this bill. If these amendments are adopted—and I anticipate that they will

be but of course one never knows, but I believe they will be adopted—it will result, in my judgment, in a good piece of legislation. It will be fair to the people of the great State of New York and fair to the Indians involved. I believe if these two amendments that I shall propose are adopted, that it will practically, if not entirely, dissipate any controversy in the matter.

The first amendment that I shall propose will provide as follows:

That full faith and credit shall be given by such courts to all treaties between the United States and any recognized tribe or tribes of Indians in the State of New York, and in all actions and proceedings with respect to tribal laws and customs between and among reservation Indians full faith and credit shall also be given by such courts to the tribal laws and customs of such tribe or tribes.

Mr. MILLER of Nebraska. Mr. Chairman, will the gentleman yield?

Mr. MORRIS. I yield.

Mr. MILLER of Nebraska. In the gentleman's opinion, will there be any conflict between the treaty now in existence between the Indians and the State of New York or the Federal Government and the laws under which they necessarily must exist if this bill becomes law?

Mr. MORRIS. Dr. MILLER, no one in the world can answer that with any degree of absoluteness. But I will say in all probability there will be some conflict.

Mr. MILLER of Nebraska. And if there are some conflicts, in the gentleman's opinion do the customs and unwritten laws and those things under the treaty have first priority over the laws of the State of New York, or are they superseded by the laws of the State of New York?

Mr. MORRIS. The treaty rights will have first priority and will supersede the laws of the State of New York, if this amendment is adopted. I call attention to the fact that that same provision in substance is in the bill now as passed by the Senate. This is just a different approach to the same thing which is in the bill. The bill now says:

Provided, That the governing body of any recognized tribe of Indians in the State of New York shall have the right to declare, by appropriate enactment within 1 year from the date of this act, those tribal laws and customs which they desire to preserve, which, on certification to the Secretary of the Interior, by the governing body of such tribe shall be published in the Federal Register and thereafter shall govern in all civil cases involving reservation Indians, when the subject matter of such tribal laws and customs is involved or at issue.

In other words, the bill now says that if the Indians want to exempt any of their laws and customs and treaty rights from the operation of the law, they may do so by declaring what those laws and customs are within 1 year from the time of the enactment of this act. But the objection was made that their tribal customs are such that it might be absolutely impossible to put them in writing. I can see where that might be a good and valid objection. I do not know—they may have some customs that we are not familiar with, which have been handed down from generation to generation, and which are not even capable or susceptible of being expressed in written English language. This amendment, of course, will do the same thing that the original bill coming from the other body seeks to do, but it will do it in a much better and more satisfactory manner, I believe.

Mr. FERNANDEZ. Mr. Chairman, will the gentleman yield?

Mr. MORRIS. I yield to the gentleman from New Mexico.

Mr. FERNANDEZ. If I may say so, I think that the provision in the Senate bill is a very good provision—for this reason—that the difficulty with these tribes in the matter of these customs, which are not written but which are enforced, is that when the individual Indian comes up against the proposition and the tribal court says such and such is the custom, there is no way for him to disprove the fact that it is the custom. Yet it may not be the custom at all, but the tribal court or council is the judge of whether it is the custom or not. So the individual Indian is at a disadvantage. We give the Indian the right to vote and we require him to bear arms, but yet as an individual we deny him the right to go to the courts and to have the [12460] rules and laws under which he is governed written so that everybody can know what they are and so that they will not be changed at the last moment when the case comes up for trial. So far as the gentleman's amendment is concerned, I do not see any difficulty about it, except as to how it is going to be applied, because if the customs are not capable of being written, how is the court going to enforce them? I think they should require to have whatever laws may govern the Indians under the tribal laws written so that the State court can recognize those laws and enforce them. That is our difficulty in New Mexico. And, as the gentleman will remember, we had a similar amendment to the Navajo bill which, I am sorry to say, the President vetoed. But that could not be helped. However, the time will come when that will have to be taken care of. We are denying to the individual Indians their civil rights as State citizens to appeal to the State courts in the settlement of their cases.

Mr. MORRIS. May I say to the gentleman from New Mexico that we have spent a long time in committee trying to work out a satisfactory way to handle this

matter. I hope the distinguished gentleman will go along with us on this provision, because I do sincerely believe it is the best solution. This solution is also offered by the Department. This is word for word the final version of the matter which was prepared by the Secretary of the Interior for the Bureau of Indian Affairs. We have spent a great deal of time on this particular matter. I hope the gentleman will go along with us on it.

Mr. FERNANDEZ. I will be more than happy to go along, because, even though it is not perfect, certainly it is a step forward, and I am strongly in favor of that.

Mr. MORRIS. I thank the gentleman a great deal.

Mr. Chairman, the other amendment which I propose to offer is this:

Provided further, That nothing herein contained shall be construed as conferring jurisdiction on the courts of the State of New York or making applicable the laws of the State of New York in civil actions involving Indian lands, or claims with respect thereto, which relate to transactions or events transpiring prior to the effective date of this act.

Mr. Chairman, I do not think there will be any objection from any source with regard to this particular amendment. This just assures the Indians of an absolutely fair and impartial determination of any claims they might have had growing out of any relationship they have had with the great State of New York in regard to their lands.

I think there will be no objection to that; they certainly ought to have a right to have those claims properly adjudicated. As it is now, the Indians, as we know, are wards of the Government and, therefore, the statute of limitations does not run against them as it does in the ordinary case. This will preserve their rights

so that the statute will not be running against them concerning those claims that might have arisen before the passage of this act.

In addition thereto, of course, they may go into the Federal courts and adjudicate any differences they have had between themselves and the great State of New York relative to their lands, or claims in regard thereto, and I am sure that the State of New York should have and no doubt will have, no objection to such provision.

I expect to offer these two amendments at the proper time. I believe that if these amendments are adopted that we will practically, if not entirely, remove the controversial matters involved in this bill; and I believe that we will then have passed a bill that will be a forward step for the great State of New York and a forward step for these great American citizens up there that we refer to as Indians.

Mr. PETERSON. Mr. Chairman, I have no further requests for time.

The CHAIRMAN. The Clerk will read the bill for amendment.

The clerk read as follows:

Be it enacted, etc., That the courts of the State of New York under the laws of such State shall have jurisdiction in civil actions and proceedings between Indians or between one or more Indians and any other person or persons to the same extent as the courts of the State shall have jurisdiction in other civil actions and proceedings, as now or hereafter defined by the laws of such State: *Provided,* That the governing body of any recognized tribe of Indians in the State of New York shall have the right to declare, by appropriate enactment within 1 year from the date of this act, those tribal laws and customs which they desire to preserve, which, on

certification to the Secretary of the Interior by the governing body of such tribe shall be published in the Federal Register and thereafter shall govern in all civil cases involving reservation Indians when the subject matter of such tribal laws and customs is involved or at issue: *Provided, further,* That nothing in this act shall be construed to require any such tribe or the members thereof to obtain fish and game licenses from the State of New York for the exercise of any hunting and fishing rights provided for such Indians under any agreement, treaty, or custom: *Provided further,* That nothing herein contained shall be construed as subjecting the lands within any Indian reservation in the State of New York to taxation for State or local purposes, nor as subjecting any such lands, or any Federal or State annuity in favor of Indians or Indian tribes, to execution on any judgment rendered in the State courts, except in the enforcement of a judgment in a suit by one tribal member against another in the matter of the use or possession of land: *And provided further,* That nothing herein contained shall be construed as authorizing the alienation from any Indian nation, tribe, or band of Indians of any lands within any Indian reservation in the State of New York.

SEC. 2. This act shall take effect 2 years after the date of its passage.

Mr. PETERSON (interrupting the reading of the bill). Mr. Chairman, I ask unanimous consent that further reading of the bill be dispensed with; that it be printed in the RECORD and be open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. MORRIS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MORRIS: Page 1, line 9, beginning with the word "That" strike out all language extending through the word "issue" on page 2, line 8, and insert in lieu thereof the following: "That full faith and credit shall be given by such courts to all treaties between the United States and any recognized tribe or tribes of Indians in the State of New York, and in all actions and proceedings with respect to tribal laws and customs between and among reservation Indians full faith and credit shall also be given by such courts to the tribal laws and customs of such tribe or tribes."

Mr. PETERSON. Mr. Chairman, deferring to the superior judgment of the gentleman from Oklahoma, I made a study of the amendment and we accept the amendment.

The CHAIRMAN. The question is on the amendment.

The amendment was agreed to.

Mr. MORRIS. Mr. Chairman, I offer a further amendment.

The Clerk read as follows:

Amendment offered by Mr. MORRIS: Page 3, line 5, before the period, insert a colon and add the following: "*Provided further,* That nothing herein contained shall be construed as conferring jurisdiction on the courts of the State of New York or making applicable the laws of the State of New York in civil actions involving Indian lands or claims with respect thereto which relate to transactions or events transpiring prior to the effective date of this act."

Mr. PETERSON. Mr. Chairman, I have no objection to the amendment.

Mr. FERNANDEZ. Mr. Chairman, I move to strike out the last word.

Mr. Chairman, I take this time to express my thoughts with respect to this amendment. Naturally, a good many of the problems which will arise between individual Indians will be with respect to lands, property, and with respect to acts which occurred in the past. I do not know how this amendment is going to be enforced; I should like to hear a little more about just how the gentleman from Oklahoma thinks it can be enforced. I am not, however, going to oppose it, because by adopting this bill it goes to the conference committee and perhaps there the language can be so written as to carry forward what is intended by the amendment. Maybe it will be accepted by the Senate. If it is, then that is all right because we have done the one thing that is necessary, and that is to place them under the jurisdiction of the State laws just as we attempted to do in the case of the Navajo Reservation, where they have no tribal laws, where they have no tribal government for effective enforcement of laws, where they have no tribal courts except those which we have forced upon them. If as time rolls along we discover or the courts discover that most of these past transactions are the ones that are causing trouble they can come back to Congress for an amendment. For these reasons I shall not oppose the amendment but will on the other hand support the amendment in the hope that the bill will pass; and I will support the bill as a good forward step.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Oklahoma.

The amendment was agreed to.

Mr. O'SULLIVAN. Mr. Chairman, I offer an amendment.

[12461] The Clerk read as follows:

Amendment offered by Mr. O'SULLIVAN: Insert as the last paragraph of section 3 the following:

"*Provided, however,* That this act shall become effective only upon approval of a majority of the New York Indians at an election duly called by the Commissioner of Indian Affairs of the Department of the Interior. Such election shall be held upon 30 days notice at places convenient to the voters and upon such rules as may be prescribed by the Commissioner. Such election shall be held within 120 days following the passage and approval of this act."

Mr. O'SULLIVAN. Mr. Chairman, at this time, when this legislative body is giving every effort to support the cause of free determination of peoples throughout the world as opposed to the forces of aggression, a very considerable thought must be given to any legislation affecting the American Indian. One need not dwell, except in passing, on the blots besmirching the national honor and sense of fair play which have spattered the record of our dealings and double-dealings with the American Indian; solemn peace treaties broken, agreements violated, lands confiscated, depredations tolerated and duty avoided, all strew the path of our national progress toward assimulation of Indians. Most of the acts were done to the accompanying hymns of "Indian-helping," and with blatant propaganda that same was necessary to help the Indian along the road to progress and to greater freedom.

Today we are rushed into consideration of another piece of legislation stated to be vitally necessary to the New York Indians. The effect of this legislation is to turn all of the Indians in New York over to the State of New York. The effect of S. 192 is to delegate the duty of

wardship over the New York Indians, all of them, to the State. Notwithstanding the solemn pledge of the United States to protect the Indians in the free enjoyment, of their lands, a clause in the treaties—and notwithstanding the obligation to support their cause through the Federal laws and judicial system, the proposal is now before us to turn over this complete civil jurisdiction, lock, stock, and barrel, to the State of New York, exclusively. Was there ever a more flagrant violation of a treaty, a more craven way of shirking responsibility and breaking faith?

Consider for the moment that some of these Indians live on the same lands which their fathers occupied since the Iroquois Federation was formed in the sixteenth century. Some of them, particularly the Senecas, have been governed by their own constitution for over 100 years. The constitution of the Seneca Indians was recognized by Congress in 1868. This constitution provides for legislative, executive and judicial branches of government independent of other civil jurisdictions. Why must this be destroyed now to give complete authority to New York State? You have heard that it is to be beneficial to the Indians who are enlightened enough to assume equal status with the white citizen of New York. Should not then these same enlightened people be allowed to express their willingness to accept this new status in surrender of their treaty rights? In all fairness our national ideal must be preserved to allow these people to determine freely their acceptance or rejection of this legislation.

Hence I have offered this amendment to the bill S. 192, which will resolve all doubts about the legality of this legislation.

Mr. MORRIS. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Nebraska [Mr. O'SULLIVAN].

Mr. Chairman, had it not been for the provision that I discussed only a few minutes ago in the bill itself giving the Indians involved the right to determine whether or not they wanted to come under the law in those instances where their customs, laws and treaty rights should be involved, and now the provision that is in the bill by the adoption of the amendment that I offered that their treaty rights will definitely be observed and protected, and the further amendment that was adopted just a few minutes ago by the committee giving them an absolute guaranty as to a proper and just and equitable adjudication of their claims, had it not been, as I say, for these provisions in the original bill and in the bill as it has now been amended, then the amendment offered by the gentleman would come with great force to me, at least, and I think to all of us. But certainly there would be no point now, as I see it, in going to the expense or using the cumbersome machinery of holding an election there, perhaps causing confusion and misunderstanding. There would be no point to it at all.

We have approached this matter in two different ways in our committee. In one or two instances we have provided for a plebiscite on the part of the Indians, provided for an election to be held, but those were instances where there was just a blanket provision that they be brought under the law. The bill now as it is does not bring them under the law in any instance where their treaty rights could in any way be impaired. It does not bring them under the law or deprive them of any claims that they might have. So, in my judgment, we would be very unwise now in adopting this amendment since the bill is in the condition it is in at this time.

Mr. McSWEENEY. Mr. Chairman, will the gentleman yield?

Mr. MORRIS. I yield to the gentleman from Ohio.

Mr. McSWEENEY. Did any of the representatives of those Indian groups appear before the committee?

Mr. MORRIS. Yes, a number of them.

Mr. McSWEENEY. They are in favor of the bill?

Mr. MORRIS. No. I would say that those who came were not in favor of it. That is why we offered the amendments. They were very much opposed to the bill as it was. I cannot say for absolute certainty, but I do sincerely believe, knowing the matter as I do, having studied it for a long time, that now the Indians will be satisfied. I think almost all of them will be satisfied because of these amendments that have been adopted. I may say to the gentleman they were very much opposed to the bill originally. Now I believe they will not oppose the bill as it stands at the present time.

Mr. PETERSON. Mr. Chairman, will the gentleman yield?

Mr. MORRIS. I yield to the gentleman from Florida.

Mr. PETERSON. Their rights will be protected, and, specifically, we are protecting their treaty rights?

Mr. MORRIS. Yes. I believe, Mr. Chairman, we would be unwise in adopting this amendment now, but I admit that had we not taken the course we have taken the amendment might have been justified.

Mr. MARSHALL. Mr. Chairman, will the gentleman yield?

Mr. MORRIS. I yield to the gentleman from Minnesota.

Mr. MARSHALL. To clear up one point may I say that the amendment which has been offered by the gentleman from Nebraska is very similar to one which was considered by the committee and rejected. It is almost in identically the same words.

Mr. MORRIS. That is correct.

Mr. MARSHALL. We rejected it simply because we believed this provision which we have in the bill itself gives much greater leeway to the Indians at the time as to what they want in their legislation than the provision of accepting or rejecting would. This bill which we have before us gives them plenty of opportunity to pick out those customs which they desire to be recognized by the State of New York.

Mr. MORRIS. I thank the gentleman for a very fine contribution. I will say this: We feel, after having made a study of the matter, that the amendments we have adopted to the bill will be far better for the Indians and will protect their rights much better than the approach that the distinguished gentleman from Nebraska is trying to make would. In other words, there are so many issues involved, there would be so much confusion that probably they would not know exactly how to vote.

The CHAIRMAN. The time of the gentleman from Oklahoma has expired.

Mr. MORRIS. Mr. Chairman, I ask unanimous consent to proceed for two additional minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

Mr. MILLER of Nebraska. Mr. Chairman, will the gentleman yield?

Mr. MORRIS. I yield to the gentleman from Nebraska.

Mr. MILLER of Nebraska. I was going to say that our committee did discuss this amendment and after due consideration they felt it should not be considered on both the minority and majority sides. I am of the opinion that the amendment is not necessary to this bill and it ought to be rejected, and I hope the House will reject it, because the amendment offered by the gentleman who is

now in the well of the House, Mr. MORRIS, takes care of the situation that [12462] the gentleman from Nebraska [Mr. O'SULLIVAN] had in mind.

Mr. MORRIS. I thank the gentleman. I think that the amendments are far better as affecting both the great State of New York and the Indians involved; in other words, that it is better for all parties concerned; it is a better approach; it is fairer and less confusing, and certainly I believe, or else I would not be here supporting it, that the Indians' rights are definitely and positively protected. I believe that sincerely.

Mr. REED of New York. Mr. Chairman, I move to strike out the last word.

Mr. Chairman, I think the time has come to be very realistic about this legislation. This is not the first time I have taken the floor in behalf of legislation for the good of the Indians. I have had the honor of representing these Indians in Congress now for 32 years and never once have I had any criticism of any legislation which has been offered here until a certain lobbyist got hold of this bill and has now, of course, found a gold mine as far as the Indians are concerned.

The State of New York has been just and generous to the Indians. They can attend the Indian schools, financed by New York State taxpayers. I want to give you just another picture of what the people of the State have done. There is not a person here that has been objecting to this legislation, not one from any State, that can show the generosity that has been shown the Indians by the great Empire State of New York. The Indians have been there since the organization of the State under the colonial system. Just take one school alone. From 1911 to 1930, inclusive, the New York State Legislature has appropriated for the Thomas Indian School $1,849,797.72, and from June 30, 1931, to June 30, 1950,

inclusive, the legislature appropriated $4,107,703.44. Other educational purposes, $2,404,826.27, and from 1911 to 1930, $626,615. Agricultural work $66,000 at one time. Maintenance of Indian poor $2,249,899.10. Capital improvement repairs from 1931 to 1950, $469,915. For construction alone $5,714,665. And so on.

The people of New York like the Indians. They are fine people. They are citizens. As I say, I have represented them for 32 years. The purpose of this amendment that has been offered is to simply water this bill down and ruin this legislation, if they can. There are unconscionable people who visit the Indian reservation trying to get the lawless Indians drunk, trying to terrorize some of them, and see if they cannot defeat this program under S. 192, for the good of the law-abiding Senecas. They have not the interest of the Indians at heart. The reputable, the educated Indians want it. They believe in their property rights. They know that they can get their rights in the State courts. So, I urge you gentlemen not to be carried away by this amendment, the purpose of which is to impose restrictions on sound legislation.

Mr. KEATING. Mr. Chairman, will the gentleman yield?

Mr. REED of New York. I yield to the gentleman from New York.

Mr. KEATING. I think the record should show, at this point, the sincere and conscientious fight that the gentleman from New York has put up for the Indians over a period of years. If the gentleman from New York is opposed to this amendment, that is enough for me, because I know that the gentleman only acts in the real interest of the Indians.

Mr. REED of New York. I thank the gentleman. My forebears were Quakers. The Quakers set up a school way back there in the early 1700's for the Indians. They

backed the Indians all throughout the years. Why should I be here trying to do anything injurious to the Indians, whose reservation is right in my district? Why should a person come in here with an amendment and speak for the Indians who lives practically 2,000 miles away from them?

Mr. MILLER of Nebraska. Mr. Chairman, will the gentleman yield?

Mr. REED of New York. I yield to the gentleman from Nebraska.

Mr. MILLER of Nebraska. It has been the experience of members of the Committee on Public Lands that most of the difficulty comes about by some lobbyist or cheap lawyer who wants to keep on milking the Indians. That has been done in the past and is being done now. It seems to me if this amendment is adopted it would be a paradise for some lawyers of questionable repute to continue to get fees not always in line with good practice.

Mr. REED of New York. That is what the bill S. 192 is for, to stop this racket being perpetrated by irresponsible people.

Mr. ALLEN of Illinois. Mr. Chairman, will the gentleman yield?

Mr. REED of New York. I yield to the gentleman from Illinois.

Mr. ALLEN of Illinois. I have had the same experience that the gentleman from Nebraska has had. I have had lobbyists call on me that did not know any more about Indians than Japanese. Probably that accounts for the amendment which has been offered.

Mr. FERNANDEZ. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, the fundamental issue at the bottom of this legislation is that stated in a letter read by the gentleman from New York [Mr. REED], which he received

from one of the Indians, and that is whether or not the individual Indian citizens of the State of New York shall have decent courts and shall have the right that every other citizen has to appeal to the courts of the State. I think the Congress has been derelict in requiring these Indians to live under a tribal government all these years without giving them the right that every other citizen has to their State courts. I compliment the committee in bringing this bill to the floor. If we adopt this amendment, we once again sidestep that necessary action. I ask you a very simple question: What right has the majority of the Indians in a tribe to tell the minority citizens of that tribe that they shall continue to be denied their right to appeal to the State courts as State citizens in their reservation? And what right have we to empower a majority of the Indians in a reservation to say that the minority shall be denied those civil rights as American citizens? That is the issue here.

If we adopt this amendment, we are simply sidestepping the issue again and again as we have done in the past. I think the Congress has been derelict long enough. We ought to proceed with this bill and then bring other bills in affecting other reservations and do the same job for their minority Indians, many of whom have no protection whatever under their tribal governments.

The amendment should be defeated, and the bill passed.

Mr. PETERSON. Mr. Chairman, I move to strike out the last two words.

Mr. Chairman, I will not take the entire 5 minutes, but I do rise in opposition to the amendment because I think the amendment offered by the gentleman from Oklahoma [Mr. MORRIS] covers the situation. The amendment offered by the gentleman from Nebraska [Mr.

O'SULLIVAN] would complicate it. However, I know the gentleman from Nebraska is very conscientious and very sincere in this problem, as he is in all other problems. I do not think his approach to this has been engendered by lobbyists or by any other motive, other than trying to benefit the Indians. Indian problems are troublesome. They arouse our sympathies and I believe this is a sincere effort on his part to help them. I do believe, however, that the amendment offered by the gentleman from Oklahoma [Mr. MORRIS] covers the situation, and the amendment offered by the gentleman from Nebraska [Mr. O'SULLIVAN] should be voted down.

Mr. MARSHALL. Mr. Chairman, I rise in opposition to the pro forma amendment.

Mr. Chairman, the Indians who appeared before our committee from the tribes of the State of New York were very intelligent and it would be a credit to any State to have such well-informed citizens so well able to express themselves before a committee of the Congress.

I want to emphasize that at no time in any appearance before the committee were there any lobbying activities or any attorneys taking advantage, apparently, of the situation to bring pressure to bear upon the members of the committee. I want to make that point very clear.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Nebraska [Mr. O'SULLIVAN].

The question was taken; and on a division (demanded by Mr. O'SULLIVAN) there were—ayes 6, noes 49.

So the amendment was rejected.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. YOUNG, Chairman of the Committee of the Whole House on the State of the

Union, reported that that Committee, having had under consideration the bill (S. 192) to confer jurisdiction on the courts of the State of New York with respect to civil actions between Indians or to which Indians are parties, pursuant to House Resolution 747, he reported the bill back to the House with sundry [12463] amendments adopted by the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

The SPEAKER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER. The question is on the passage of the bill.

The question was taken; and on a division (demanded by Mr. O'SULLIVAN) there were—ayes 64, noes 1.

Mr. O'SULLIVAN. Mr. Speaker, I object to the vote on the ground that a quorum is not present, and make the point of order that a quorum is not present.

Mr. ALLEN of Illinois. Mr. Speaker, a parliamentary inquiry. Can a Member vote for a bill and then ask for a roll call and object on the ground that a quorum is not present, as the gentleman from Nebraska just did?

The SPEAKER. The Chair is trying to ascertain whether a quorum is present.

Mr. ALLEN of Illinois. Mr. Speaker, the gentleman voted for the bill. He just rose on a division. And then he voted against it. He voted both ways.

The SPEAKER. That is not a parliamentary inquiry.

The gentleman from Nebraska [Mr. O'SULLIVAN] objects to the vote on the ground that a quorum is not present, and makes the point of order that a quorum is not present. Evidently a quorum is not present.

The Doorkeeper will close the doors, the Sergeant at Arms will notify absent Members, and the Clerk will call the roll.

The queston was taken; and there were—yeas 295, nays 4, not voting 131, as follows:

[Roll No. 236]

YEAS—295

Abbitt
Abernethy
Addonizio
Albert
Allen, Calif.
Allen, Ill.
Allen, La.
Andersen, H. Carl
Anderson, Calif.
Andresen, August H.
Andrews
Angell
Arends
Aspinall
Auchincloss
Bailey
Baring
Barrett, Pa.
Bates, Ky.
Bates, Mass.
Battle
Beall
Beckworth
Bennett, Fla.
Bennett, Mich.
Bentsen
Blemiller
Bishop
Blatnik
Boggs, La.
Boiling
Bolton, Md.
Bolton, Ohio
Bonner
Bosone
Boykin
Bramblett
Brown, Ga.
Bryson
Buchanan
Buckley, Ill.
Buckley, N. Y.
Burdick
Burke
Burleson
Burnside
Byrne, N. Y.
Byrnes, Wis.
Camp
Canfield
Carnahan
Case, N. J.
Chelf
Cheney
Chudoff
Clemente
Cole, Kans.
Colmer
Combs
Cooper
Corbett
Cotton
Coudert
Cox
Crook
Crosser
Cunningham
Curtis
Dague
Davenport
Davis, Ga.
Davis, Tenn.
Davis, Wis.
Deane
DeGraffenried
Dollinger
Dolliver
Donohue
Doughton
Douglas
Eberharter
Elliott
Ellsworth
Elston
Evins
Fenton
Fernandez
Fisher
Flood
Fogarty
Forand
Ford
Fugate
Fulton
Gamble
Gary
Gathings
Gavin
Gilmer
Golden
Goodwin
Gordon
Graham
Granahan
Granger
Grant
Green
Gregory
Gross
Gulll
Gwinn
Hagen
Hale
Hall, Edwin Arthur
Hall, Leonard W.
Halleck
Hand
Hardy
Harris
Harrison
Hart
Harvey
Havenner
Hays, Ark.
Hays, Ohio
Hedrick
Heffernan
Heselton
Hill
Hobbs
Hoffman, Mich.
Holmes
Hope
Horan
Howell
Huber
Hull
Irving
Jackson, Calif.
Jackson, Wash.
Jacobs
Javits
Jenison
Jennings
Jensen
Jones, Ala.
Jones, Mo.
Jones, N. C.
Judd
Karst
Karsten
Kean
Kearney
Kearns
Keating
Kee
Kelley, Pa.
Kelly, N. Y.
Keogh
Kerr
Kilburn
Kilday
King
Kirwan
Klein
Kruse
Kunkel
Lane
Larcade
LeCompte
LeFevre
Lind
Linehan
Lovre
Lyle
Lynch
McCarthy
McCormack
McCulloch
McDonough
McGrath
McGregor
McGuire
McKinnon
McMillan, S. C.
McSweeney
Madden
Mahon
Mansfield
Marsalis
Marshall
Martin, Iowa
Martin, Mass.
Merrow
Meyer
Michener
Miller, Calif.
Miller, Md.
Miller, Nebr.
Mills
Mitchell
Monroney
Morris
Morrison
Moulder
Murdock
Murray, Tenn.
Nicholson
Noland
O'Brien, Ill.
O'Brien, Mich.
O'Hara, Minn.
O'Konski
O'Neill
O'Toole
Passman
Patterson
Perkins
Peterson
Philbin
Phillips, Calif.
Plumley
Poage
Polk
Poulson
Price
Priest
Rabaut
Rains
Rankin
Reed, Ill.
Reed, N. Y.
Rees
Rhodes
Ribicoff
Richards
Riehlman
Rivers
Robeson
Rodino
Rogers, Fla.
Rogers, Mass.
Rooney
Sadlak
St. George
Sanborn
Sasscer
Saylor
Scrivner
Scudder
Secrest
Shafer
Short
Sikes
Simpson, Ill.
Simpson, Pa.
Sims
Smith, Va.
Smith, Wis.
Staggers
Steed
Stigler
Stockman
Sullivan
Sutton
Taber
Tackett
Taylor
Thompson
Thornberry
Tollefson
Trimble
Underwood
Van Zandt
Vursell
Wagner
Walter
Welchel
Welch
Wheeler
White, Calif.
Whittington
Widnall
Wier
Wigglesworth
Wilson, Ind.
Wilson, Okla.
Withrow
Wolverton
Wood
Woodhouse
Woodruff
Yates
Young
Zablocki

NAYS—4

Feighan O'Sullivan Tauriello
Gorski

NOT VOTING—131

Barden
Barrett, Wyo.
Blackney
Boggs, Del.
Breen
Brehm
Brooks
Brown, Ohio
Bulwinkle
Burton
Cannon
Carlyle
Carroll
Case, S. Dak.
Cavalcante
Celler
Chatham
Chiperfield
Christopher
Clevenger
Cole, N. Y.
Cooley
Crawford
Davies, N. Y.
Dawson
Delaney
Denton
D'Ewart
Dingell
Dondero
Doyle
Durham
Eaton
Engel, Mich.
Engle, Calif.
Fallon
Fellows
Frazier
Furcolo
Garmatz
Gillette
Gore
Gossett
Harden
Hare
Hébert
Heller
Herlong
Herter
Hinshaw
Hoeven
Hoffman, Ill.
Holifield
James
Jenkins
Johnson
Jonas
Keefe
Kennedy
Lanham
Latham
Lichtenwalter
Lodge
Lucas
McConnell
McMillen, Ill.
Mack, Ill.
Mack, Wash.
Macy
Magee
Marcantonio
Mason
Miles
Morgan
Morton
Multer
Murphy
Murray, Wis.
Nelson
Nixon
Norblad
Norrell
Norton
O'Hara, Ill.
Pace
Patman
Patten
Pfeifer, Joseph L.
Pfeiffer, William L.
Phillips, Tenn.
Pickett
Potter
Powell
Preston
Quinn
Ramsay
Redden
Regan
Rich
Roosevelt
Sabath
Sadowski
Scott, Hardie
Scott Hugh D., Jr.
Shelley
Sheppard
Smathers
Smith, Kans.
Smith, Ohio
Spence
Stanley
Stefan
Talle
Teague
Thomas
Towe
Velde
Vinson
Vorys
Wadsworth
Walsh
Werdel
Whitaker
White, Idaho
Whitten
Wickersham
Williams
Willis
Wilson, Tex.
Winstead
Wolcott

So the bill was passed.

The Clerk announced the following pairs:

Mr. Roosevelt with Mr. Macy.
Mr. Heller with Mr. Dondero.
Mr. Holifield with Mr. Herter.
Mr. Joseph L. Pfeifer with Mr. Hinshaw.
Mr. Garmatz with Mr. James.
Mr. Sabath with Mr. Wolcott.
Mr. Sadowski with Mr. Brown of Ohio.
Mr. Kennedy with Mr. Cole of New York.
Mr. Delaney with Mr. Nelson.
Mr. Mack of Illinois with Mr. Chiperfield.
Mr. Denton with Mr. Boggs of Delaware.
Mr. Magee with Mr. Crawford.
Mr. Whitten with Mr. Rich.
Mr. Dingell with Mr. Hardie Scott.
Mr. Morgan with Mr. Hoeven.
Mr. Williams with Mr. Johnson.
Mr. Winstead with Mr. Jonas.
Mr. Smathers with Mr. Norblad.
Mrs. Norton with Mr. Hugh D. Scott, Jr.
Mr. Willis with Mr. William L. Pfeiffer.
Mr. Stanley with Mr. Brehm.
Mr. Wickersham with Mr. Gillette.
Mr. O'Hara of Illinois with Mr. Hoffman of Illinois.
Mr. Morgan with Mr. Jenkins.
Mr. Frazier with Mr. Keefe.
Mr. Regan with Mr. Murray of Wisconsin.
Mr. Patten with Mr. Towe.
Mr. Pickett with Mr. Stefan.
Mr. Powell with Mr. Fellows.
Mr. Marcantonio with Mr. Smith of Ohio.
Mr. Cavalcante with Mr. Morton.
Mr. Carroll with Mr. Blackney.
Mr. Davies of New York with Mr. Eaton.
Mr. Preston with Mr. Engel of Michigan.
Mr. Celler with Mr. Vorys.
Mr. Lanham with Mr. Velde.
Mr. Lucas with Mr. Werdel.
Mr. Walsh with Mr. Potter.
Mr. Whitaker with Mr. D'Ewart.
Mr. Murphy with Mr. Clevenger.
Mr. Multer with Mr. Mason.
Mr. Hebert with Mr. Latham.
Mr. Herlong with Mr. McConnell.
Mr. Gossett with Mr. Lichtenwalter.
Mr. Pace with Mr. Barrett of Wyoming.
Mr. Patman with Mr. Case of South Dakota.
Mr. Teague with Mr. Talle.
Mr. Thomas with Mr. Wadsworth.
Mr. Redden with Mr. Smith of Kansas.
Mr. Breen with Mrs. Harden.

The result of the vote was announced as above recorded.

The doors were opened.

A motion to reconsider was laid on the table.

APPENDIX F(16)

Senate Report No. 2105

SENECA NATION OF INDIANS, N. Y.—LEASES—COLLECTION AND DISBURSEMENT OF MONEYS

For text of Act see p. 447

Senate Report No. 2105, July 19, 1950 [To accompany H.R. 4942]

House Report No. 1238, Aug. 9, 1949 [To accompany H.R. 4942]

The Senate Report repeats in substance the House Report.

Senate Report No. 2105

THE Committee on Interior and Insular Affairs, to whom was referred the bill (H. R. 4942), providing for the regulation of the collection and disbursement of moneys realized from leases made by the Seneca Nation of Indians of New York, having considered the same, report thereon with the recommendation that it do pass.

This bill has been considered by the Committee on Public Lands of the House. On August 9, 1949, that committee submitted its report (H. Rept. 1238) to the House, recommending passage, and on May 1, 1950, H. R. 4942 passed the House.

On May 26, 1949, a similar bill (S. 1947) was introduced in the Senate by Senators Butler and Ives and referred to your committee for consideration. Study was given this bill, both in the first session and in the second session. Hearings were held in June 1949 and in June 1950. At these hearings the Indians and their representatives appeared and testified as did officials of the Bureau of Indian Affairs, officials of the city of Salamanca, and of the State of New York. Every effort was made to get all viewpoints and to reconcile such interests as were deemed to be conflicting. The purpose of your committee's amendments is to reconcile these interests and to safeguard especially the rights of the Indians.

The Secretary of the Interior submitted to your committee his report on S. 1947 dated August 8, 1949, recommending the enactment of this proposed legislation. A copy of said report is attached hereto.

The purpose of this legislation is to permit the city of Salamanca and the Seneca Nation of Indians to stablize their relationship, insofar as the leases of the land owned by the Seneca Indians, on which the city of Salamanca stands, are concerned. The city of Salamanca urgently desires that some arrangement be made whereby the rentals on these leases could be paid to the Indians by the city of Salamanca on behalf of the lessors so that there would be no question of forfeiture as far as the Indians are concerned. Thus, the city of Salamanca would have rights equivalent to a sublessor and could transfer leases obtained from a tax sale, for instance, to another lessor but without disturbing the terms of the lease.

The city of Salamanca maintains that this would introduce an essential element of stability into property values and would help attract industry and other commercial endeavors which now, according to city offi-

cials, are restrained from coming to Salamanca because of the tenuous nature of the city's jurisdiction over these lands.

Although it was generally conceded that these objectives were sound and desirable, your committee felt it was equally vital to protect the rights of the Indians against any clouding of their title to these lands, or any infringement of their basic rights as lessors.

In order to give the city of Salamanca the legislative authority under its charter to collect and make payment of these rents to the Indians, the State of New York in 1949 enacted a bill (787, Session Laws of 1949) amending the charter and authorizing the city to perform this function and assume this authority. The city of Salamanca is authorized to collect the rentals by tax levies on facilities of firms and individuals located on lands leased from the Indians. Obviously authorization by the Congress was also necessary, and this is the reason for H. R. 4942.

The New York State law referred to reads as follows:

SECTION 1. Section one hundred seventy-four-a of chapter five hundred seven of the laws of nineteen hundred thirteen, constituting the charter of the city of Salamanca, as added by chapter two hundred thirty-one of the laws of nineteen hundred forty-two, is hereby amended to read as follows:

"§ 174-a. Rentals on Indian leases; payment by city; reimbursements by levy. The greater part of the corporate limits of the city of Salamanca is located on the Allegany Indian Reservation the Seneca Nation of Indians pursuant to the acts of the congress of the United States enacted in the years eighteen hundred seventy-five (18 U. S. Stat. 330) and eighteen hundred ninety (26 U. S. Stat. 558). The city of Salamanca is the owner of various tracts of land within said city, and of highways, schoolhouses and public buildings therein and is dependent for its corporate expenses upon the taxes levied on real property within said city which is held under the leases aforesaid. Continuance of the validity of such leases is vital to the city of Salamanca and to its corporate existence. The cancellation of any of the leases within such city of Salamanca would seriously impair the ability of such city to pay its expenses and maintain its corporate organization. The city of Salamanca has acquired under tax sales many parcels of real estate in the city upon which rentals are in default and the city may in the future acquire other parcels of real estate by reason of tax sales upon which defaults have occurred or may hereafter be allowed to occur in the payment of rentals on leases by which said premises are held. The ability of the city of Salamanca to borrow money and maintain its corporate credit depends on the maintenance of the validity of such leases under which real property in the city of Salamanca is now held.

"All rents reserved in said leases within the corporate limits of the city of Salamanca are hereby declared to be a lien in favor of the city upon the premises described therein, superior to any other liens, except general taxes, so long as said leases or renewals thereof or leases hereafter granted under the acts of congress aforesaid are in force. The common council of the city shall cause to be levied and raised each year an assessment of rent upon each parcel of real property located within the corporate limits of the city held under any such leases in an amount equal to the rent reserved in each such lease. The city clerk under the direction of the common council shall extend and apportion such amount of the rental so reserved on each parcel of real property so held by lease now or hereafter in force, in a separate section, to be a part of and attached to the assessment roll delivered to him in each year, and shall forthwith file the same

and perform such other acts as are required of him by section one hundred seventy-five of this article as amended. The city clerk or such other person who is authorized to have the Indian lease rental assessment records in his charge, is authorized and directed to apportion the rent reserved in any said lease in the event of subdivision thereof, and to make the necessary entries on said records. Such rentals shall become liens upon delivery of the roll with a warrant annexed thereto, under the seal of the city to the comptroller, as provided in section one hundred seventy-five of this act and such rentals shall be payable to the comptroller on or before the fifteenth day of February after the delivery of such roll and warrant. The comptroller of the city shall on or before the nineteenth day of February in each year pay to such person, officer, agency or organization as may be designated by or pursuant to act of congress of the United States, the aggregate sum of all of said rentals so levied. All provisions relating to the levy and collection of taxes and assessments in this act as amended shall apply to the levy and collection of the assessment of rentals authorized by this act.

"Nothing in this section shall be construed to authorize the taxation or assessment of the property of the Seneca Nation of Indians or of any individual Indian."

SEC. 2. This act shall take effect immediately.

The protection of the rights of the Indians was as much in the mind of your committee as the needs of the city of Salamanca for the basic arrangements set forth in H. R. 4942. It happens that there are several factions within the Seneca Nation, which made it extremely difficult to ascertain the definitive sentiments of the members of the Seneca Nation in regard to all aspects of this legislation. Especially in view of this circumstance, your committee felt it essential to give particular attention to the defense and safeguarding of all possible rights of the Indians and to make sure that the new rights given to the city of Salamanca would not in any way prejudice or diminish any rights now possessed by the Indians.

The only right of which the Indians might be said to be deprived is the right to foreclose on these leases in cases of nonpayment of rent by individual lessors. This right, however, is still retained by the Indians if the city of Salamanca does not pay these rents. Moreover, in compensation for this deprivation, the Indians receive assurance of regular payment of their rental and also the reiteration of their basic title to these lands.

The new section 6 proposed by your committee as an amendment would direct the Secretary of the Interior to make available to State agencies and to the Indians themselves copies of vital records and of leases now held by the Bureau of Indian Affairs. The originals would still remain in the Department of the Interior. Assurance is given that all these copies will be open to inspection by the Indians.

This provision would apply to all New York Indians and would aid State and local officials to obtain statistics which are necessary for the granting of public assistance and the enforcement of the laws of New York in respect to the Indians.

Beginning about 1850 non-Indian settlers leased reservation lands from the Seneca Indians without approval by the United States. These leases were purportedly ratified by the State of New York, but such

ratification was invalidated by the New York Supreme Court (unreported decision set out in H. Misc. Doc. No. 75, 43d Cong., 2d sess., 1875). The act of February 19, 1875 (18 Stat. 330), ratified the existing leases for a period of not to exceed 5 years and authorized renewal of the leases for a period of 12 years. The act of September 30, 1890 (26 Stat. 558) authorized renewal of the leases for terms of not exceeding 99 years. All leases of reservation lands made under authority of these acts of Congress will expire on February 19, 1991.

The Council of the Seneca Nation now has authority to make leases of reservation lands within the villages established by the said act of February 19, 1875. The bill will increase the authority of the said council to make leases of reservation land outside of the said villages for periods of not longer than 10 years.

Section 6 of the said act of February 19, 1875, provided that the moneys arising from the rentals of the leases authorized should be paid to and be recoverable by the treasurer of the Seneca Nation and expended "in the same manner and for the same purposes as are other revenues or moneys belonging to said Seneca Nation". The act of February 28, 1901 (31 Stat. 819) provides that the moneys arising from leases of lands within the reservations of the Seneca Nation shall be paid to and be recovered by the United States Indian agent for the New York Indian Agency. The act further provides for the distribution of the said moneys among the members of the Seneca Nation, after certain deductions.

There are some three thousand 99-year leases of reservation lands within the villages established under the act of February 19, 1875, bearing a total annual rental of $13,000. In addition, there are several mining leases of reservation land outside the villages mentioned from which accrues an annual rental varying from $3,000 to $5,000. The collection and disbursement of this money is now the responsibility of the United States, but under H. R. 4942 that responsibility would be transferred to the duly authorized officials and agents of the Seneca Nation of Indians.

The great majority of the 99-year leases, having a combined rental of nearly $12,000, are located within the city of Salamanca, N. Y. The city is willing and anxious, under the heretofore cited State law, to pay to the Seneca Nation the total amount of rental on all the leases within the limits of the city and to assume the task of obtaining reimbursement by collecting from the individual lessees in the city. This will mean that the Seneca Nation will be able to collect the rental from the 99-year leases in the city of Salamanca in a lump sum, leaving less than 200 leases of all other types outside of the city on reservation lands with a total annual rental of from $3,000 to $5,000 on which separate collections will need to be made. The Common Council of the City of Salamanca, N. Y., and the Council of the Seneca Nation of Indians, acting through its lease committee, have adopted resolutions agreeing to this procedure.

The bill contains authority whereby the sum available for the tribal council's expenses and management of the tribal business may be increased from $2,500 to $5,000 annually. The Council of the Seneca Nation at its annual meeting in 1946 and again in 1948 adopted resolutions requesting the increase. The bill will require the Treasurer of the Seneca Nation to distribute the moneys collected by him annually to the enrolled members of the Seneca Nation and to make a report on his collections and disbursements. It will also require the said treasurer to be bonded to insure performance of his duties.

It is the judgment of your committee that these Indians are competent to manage their own affairs and to assume the responsibilities which will be placed upon them by the provisions of this bill, as proposed to be amended. The enactment of this bill will make it possible for the United States to withdraw from certain operations which it is now carrying on in respect to these New York Indians, and will enable the Bureau of Indian Affairs to close its Salamanca Agency.

The Secretary of the Interior and officials of the Bureau of Indian Affairs favor the enactment of this bill as herein recommended to be amended.

A copy of the said report of the Secretary of the Interior dated August 8, 1949, is made a part of this report and reads as follows:

UNITED STATES DEPARTMENT OF THE INTERIOR,
Washington 25, D. C., August 8, 1949.

Hon. JOSEPH C. O'MAHONEY,
Chairman, Committee on Interior and Insular Affairs,
United States Senate.

MY DEAR SENATOR O'MAHONEY: This will refer to your request for a report on S. 1947, a bill to regulate the collection and disbursement of moneys realized from leases made by the Seneca Nation of Indians of New York, and for other purposes.

I urge that this bill be given speedy and favorable consideration.

The bill will permit the Seneca Nation of Indians to assume the responsibility for the collection and disbursement of tribal income accruing from leases of reservation land and its enactment will relieve the United States of this responsibility.

Beginning about 1850 non-Indian settlers leased reservation lands from the Seneca Indians without approval by the United States. These leases were purportedly ratified by the State of New York, but such ratification was invalidated by the New York Supreme Court (unreported decision set out in H. Misc. Doc. No. 75, 43d Cong., 2d sess., 1875). The act of February 19, 1875 (18 Stat. 330), ratified the existing leases for a period of not to exceed 5 years and authorized renewal of the leases for a period of 12 years. The act of September 30, 1890 (26 Stat. 558), authorized renewal of the leases for terms of not exceeding 99 years. All leases of reservation lands made under authority of these acts of Congress will expire on February 19, 1991.

The Council of the Seneca Nation now has authority to make leases of reservation lands within the villages established by the act of February 19, 1875, supra. The bill will increase the authority of the said council to make leases of reservation land outside of the said villages for periods of not longer than 10 years.

Section 6 of the act of February 19, 1875, supra, provided that the moneys arising from the rentals of the leases authorized should be paid to and be recoverable by the treasurer of the Seneca Nation and expended "in the same manner and for the same purposes as are other revenues or

moneys belonging to said Seneca Nation." The act of February 28, 1901 (31 Stat. 819) provides that the moneys arising from leases of lands within the reservations of the Seneca Nation shall be paid to and be recovered by the United States Indian agent for the New York Indian Agency. The act further provides for the distribution of the said moneys among the members of the Seneca Nation, after certain deductions.

There are some three thousand 99-year leases of reservation lands within the villages established under the act of February 19, 1875, supra, bearing an annual rental of $13,000. In addition, there are several mining leases of reservation land outside the villages mentioned from which accrues an annual rental varying from $3,000 to $5,000. The collection and disbursement of this money is now the responsibility of the United States but under the bill that responsibility would be transferred to the Seneca Nation of Indians.

The great majority of the 99-year leases having a combined rental of nearly $12,000, is located within the city of Salamanca, N. Y. The city is willing under existing State law to pay to the Seneca Nation the total amount of rental on all the leases within the limits of the city and to assume the task of obtaining reimbursement by collecting from the individual lessees in the city. This will mean that the Seneca Nation will be able to collect the rental from the 99-year leases in the city of Salamanca in a lump sum, leaving less than 200 leases of all other types outside of the city on reservation lands with a total annual rental of from $3,000 to $5,000 on which separate collections will need to be made. The Common Council of the City of Salamanca, N. Y., and the Council of the Seneca Nation of Indians, acting through its lease committee, have adopted resolutions agreeing to this procedure.

The bill contains authority whereby the sum available for the tribal council's expenses and management of the tribal business may be increased from $2,500 to $5,000 annually. The Council of the Seneca Nation at its annual meeting in 1946 and again in 1948 adopted resolutions requesting the increase. The bill will require the Treasurer of the Seneca Nation to distribute the moneys collected by him annually to the enrolled members of the Seneca Nation and to make a report on his collections and disbursements. It will also require the said treasurer to be bonded to the United States to insure performance of his duties.

In my opinion, the Seneca Nation, through its council which is elected biennially, in accordance with the tribal constitution is competent to manage its own affairs and to assume the responsibility which will be placed on it by this bill. Enactment of the bill will further the policy of placing the management of tribal affairs in the hands of the tribe and of withdrawing Federal supervision of Indian affairs where possible.

I suggest three amendments to the bill. Section 4 of the bill does not specify the purposes for which leases may be made and limits the period of any lease to not exceeding 10 years. This period may be too short particularly as to mineral or other leases requiring extensive development. I believe that section 4 should be amended by striking from lines 4 and 5, page 3, the words "for periods not to exceed 10 years" and inserting in lieu thereof the words "for such purposes and for such periods as may be permissible under the laws of the State of New York." I also suggest that another section be added to the bill, as follows: "The Commissioner of Indian Affairs is authorized to transfer to the State of New York or any legal subdivision thereof any records now in his possession." This will permit the transfer to the city of Salamanca or the State of New York such records as may be necessary in connection with any withdrawal of Federal supervision over Indian affairs in that State. I also suggest the following changes in section 3 of the bill: In line 11, page 2, delete the words "United States" and insert in lieu thereof the words "Seneca Nation." In lines 13 and 14 on page 2, delete the words "Commissioner of Indian Affairs" and insert in lieu thereof the words "Comptroller of the State of New York."

In view of your desire to have an immediate statement of the Department's views, I have not submitted this report to the Bureau of the Budget. I am unable, therefore, to inform you as to the relation of the proposed legislation to the program of the President.

Sincerely yours,

OSCAR L. CHAPMAN,
Under Secretary of the Interior.

APPENDIX F(17)

Congressional Record—House, October 10, 1990

Congressional Record—House

Wednesday, October 10, 1990

101st Cong. 2nd Sess.

136 Cong Rec H 9285

REFERENCE: Vol. 136 No. 134

TITLE: SENECA NATION SETTLEMENT ACT OF 1990

SPEAKER: Mr. CAMPBELL of Colorado; Mr. HORTON; Mr. HOUGHTON: Mr. LaFALCE; Mr. MARTIN of New York; Mr. McHUGH; Mr. MILLER of California; MR. NOWAK; Mr. RHODES; Mr. RICHARDSON; Mrs. VUCANOVICH

NOTE:
Text that appears in UPPER CASE identifies statements insertions which are not spoken by a Member of the House on the floor

* * *

[*H9285] Mr. CAMPBELL of Colorado. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5367) to provide for the renegotiation of certain

* * *

* Omitted Text of Statute

* * *

THE SPEAKER Pro tempore. Is a second demanded?

Mr. RHODES. Mr. Speaker, I demand a second.

[*H9287] The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

* * *

The SPEAKER pro tempore. The gentleman from Colorado [Mr. Campbell] will be recognized for 20 minutes, and the gentleman from Arizona [Mr. Rhodes] will recognized for 20 minutes.

The Chair recognizes the gentleman from Colorado [Mr. Campbell].

GENERAL LEAVE

Mr. CAMPBELL of Colorado. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include therein extraneous material on H.R. 5367, as amended.

The SPEAKER. Is there objection to the request of the gentleman from Colorado?

There was no objection.

Mr. CAMPBELL of Colorado. Mr. Speaker, I yield myself such time as I may consume.

(MR. CAMPBELL of Colorado asked and was given permission to revise and extend his remarks.)

Mr. CAMPBELL of Colorado. Mr. Speaker, the basic purpose of H.R. 5367 is to ratify and implement an agreement between the Seneca Indian Nation of New York and the city of Salamanca regarding the renegotiation of certain 99-year leases of the tribe's land

and to provide Federal and State compensation to the tribe for the loss of revenue and income from those lands for the last 100 years.

The aboriginal territory of the Seneca were centered on what is now western New York State. By the mid-19th century, they had lost most of their lands through a series of treaties and agreements with the United States and the State. The current land base of the Seneca Nation is composed of three small reservations in western New York; the Allegany Reservation of 30,469 acres, the Cattaraugus Reservation of 21,680 acres, and the Oil Springs Reservation of 640 acres.

In the mid-1800's, the Seneca Nation and some of its members entered into leases with certain railroad companies and with individuals for its lands on the Allegany reservations. State courts later held that these leases were void as being in violation of Federal laws requiring the consent of the United States to leases of tribal lands.

Understandably, this decision caused great concern among the non-Indian lessees who exerted political pressure upon its congressional delegation to secure ratification by Congress of these leases. In fact, the existing city of Salamanca, NY, and certain small villages were largely founded upon these leases.

Under strong economic and political pressure and over the objection of the tribe, Congress passed a law which authorized and ratified the leases and made them renewable for a 12-year period. This was later amended in 1890 to authorize a renewal for 99 years, again over the strong objection and protests of tribal leaders. These 99-year leases were subsequently executed without Federal supervision, assistance or support at extremely low rental rates with no provision for escalation of the

rents. Thus began a 100-year period during which the tribe was deprived of the use of nearly one-third of its Allegany Reservation with only a token return.

Mr. Speaker, these leases are due to expire next year. The tribe is insisting that, if the leases are renewed, they be renewed only for a moderate term and only for fair market value. The city of Salamanca and the surrounding region, already economically depressed, face increased economic pressure or the possibility of loss of their lands and improvements. To avoid this further attack on the local economy, the Nation and the city have reached an agreement on renegotiation of these leases. I believe that the proposed terms of the new leases are basically fair to the Nation.

However, Mr. Speaker, the Seneca Nation has lost millions of dollars of revenue and land value over the last 100 years solely because of the actions of the United States in authorizing and facilitating the lease of tribal lands at bargain basin prices. The bill recognizes this moral responsibility of the United States and the State of New York by requiring compensation to the tribe in the amount of $35,000,000 from the United States and $25,000,000 from the State. I urge the House to pass this bill which corrects an ancient wrong done to this tribe of Indians.

Mr. RHODES. Mr. Speaker, I yield myself such time as I may consume.

(Mr. RHODES asked and was given permission to revise and extend his remarks.)

Mr. RHODES. Mr. Speaker, I rise in support of H.R. 5367, the Seneca Nation Settlement Act of 1990. Certain historical events in the 19th century resulted in the circumstances that bring this matter to our attention in

1990. An understanding of these events helps one to appreciate why H.R. 5367 is both reasonable and necessary.

H.R. 5367 has as its foundation a settlement agreement between the nation and the city. The agreement establishes a process for renegotiation of the long-term leases, and establishes the annual rental value, including a formula for escalation of the rent over time. The original long-term leases were legislated by congress in the late 1800's, for a period of 99 years, with annual lease payments of $2 to $4 a year. The leases, which expire on February 19, 1991, where the result of railroad expansion west and the influx of white settlers on and around the Seneca Reservation in the late 1800's.

The city of Salamanca and the surrounding communities were built essentially on 99-year leases of tribal land, at below market rates, under a design approved by congress. It is clear that congressional action is necessary to clarify the status of the leases after February 19, 1991. And, it is evident that failure by Congress to act on this bill would result in economic and social chaos in and around Salamanca, NY.

The committee's consideration of this bill has brought to our attention several positive and noteworthy points. First, the Seneca Nation voluntarily agreed to the renegotation of the long-term leases and thereby expressed its commitment to safeguarding the future of the city and the surrounding communities. Second, for the first time in 99 years, the Seneca Nation has been able to strike an Arm's length bargain with the non-Indian lessees. Third, the settlement agreement sets the stage for the Seneca Nation and the local communities to

engage in joint ventures and projects that benefit the social well-being and economic health of the Indian and non-Indian communities.

Finally, this bill is the culmination of two decades of negotiation between the Seneca Nation and the City of Salamanca with regard to the expiration of the 99-year leases. This process has enhanced community relations between the senecas and the non-Indians and has encouraged the parties to chart a course for the future based on respect and even frienship.

Based on these factors, I support approval of H.R. 5367 and urge my colleagues to do the same.

Mr. Speaker, I reserve the balance of my time.

Mr. CAMPBELL of Colorado. Mr. Speaker, I yield 1 minute to the distinguished gentleman from California [Mr. Miller], a friend of the American Indian people.

(Mr. MILLER of California asked and was given permission to revise and extend his remarks.)

Mr. MILLER of California. Mr. Speaker, I rise in support of this legislation.

Mr. RHODES. Mr. Speaker, many people have been involved in putting this piece of legislation together. An awful lot of people in New York worked very, very hard on the negotiations, but the gentleman from New York [Mr. Houghton], who represents this district, has really extended himself in bringing us to this point. He is to be congratulated for all of the work he has accomplished in an area that started off not being too familiar to him in term of Indian rights settlements. I think he knows now more about it than he ever wanted to.

Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. Houghton]

[*H9288] (Mr. HOUGHTON asked and was given permission to revise and extend his remarks.)

Mr. HOUGHTON. Mr. Speaker, I thank the gentleman from Arizona [Mr. Rhodes] and the gentleman from Colorado [Mr. Campbell] for bringing this bill to the floor.

Mr. Speaker, I am really loath to stand up and talk because they have covered the territory so beautifully. But since I have been involved and so many people have been involved in this process, what I would like to to do is just take a minute to describe some of the reasons for our standing up here and proposing H.R. 5367.

At the outset, let me just say that some people think of me as a sort of budget curmudgeon, not spending a dime or a nickel in order to get this deficit down, and that is what I have been trying to do over the years. However, every so often something comes up which is very important, and it costs money, and the Seneca Nation Settlement Act of 1990 is one of those issues.

Let me just describe as background a little bit from whence we come. There is a reservation in upstate New York called the Southern Tier, and it is owned by the Seneca Nation. In it is a city. That is very unusual. There is almost no other city which is right in the middle of a reservation in this country. There are also three villages. Every one has a lease, families, businesses, churches, even the U.S. Post Office, and these leases all end in February 1991.

There are two parts to this issue. One is the future and the other is the past. The future really has been taken care of tentatively because of the extraordinary negotiations undergone with good faith and

understanding and respect by the Members of the nation and by the members of the community up there in Salamanca and the three congressional villages.

The other part, of course, is the past, and these leases are all contingent upon the resolution of a past inequity as indicated by the gentleman from Colorado [Mr. Campbell] and the gentleman from Arizona [Mr. Rhodes]. The leases were imposed by Congress upon the nation and upon the citizens. What happend was when these leases were imposed it kept the nation in a near state of poverty, and also put a lock on any increasing increments in tne rentals which could be received by the Nation.

So this bill in front of us today gives a one time $35 million payment to be matched by $25 million from the State. So this is what I respectfully ask of the Congress.

Many years ago people, corporations, rented lands from the Indians. These were the only people in the market. The Indians were forced to rent to people in the lumbering industry or people ultimately in the railroad industry, but as the years went on, this became burdensome and unfair. So in 1870 a State court said no deal, declared all the leases illegal, and really because it was a violation of the treaty between the Seneca Nation and the United States of America, which incidentally had been approved by George Washington, and it was a violation of Federal law.

The purpose of the treaty was to protect the nation's lands, which was really the only asset they had.

In 1875, as has been mentioned earlier here, Congress broke that promise and validated the leases by the individuals and authorized new 99-year leases. The nation objected, the nation objected, the nation objected,

and nothing happened. The Congress overruled the court, and in 1890, the individuals were given the right and then forced to extend the agreement for another 100 years despite the protest of the nation. There were some interesting issues here. Various Congressmen involved in this did things which today would be clearly illegal. One was the president of a bank in Salamanca. He represented people, and his suggestion to solve the Indian problem was, "a radical uprooting of the whole tribal system."

In any event, the upshot was a rental payment which gave some people for a plot of land literally as little as $1 a year. So even the most ardent budgeteer would look at this state of affairs and, I think, say that this is unfair. The Congressman, at this point, said something which is interesting, and this really indicated his hand, "I represent 8,000 people. We live upon these reservations who hold 99-year leases, and the Indians hold those leasees, and we want to get title to those lands."

It is the sad thing, of course, during all of this period of time the Interior Department did absolutely nothing. So here we are, a century later, leases ending, the city and the nation ready to look ahead, and we face the stark reality of the restitution to a nation.

The question is: Is the Federal Government really responsible at all? And I say somewhat subjectively, I might add, that it is. The Federal Government is charged with the protection of Indian interests.

Congress and not the States extended those leases, and we swore originally to protect the nations, and we did not.

What is the extent of our responsibility? Do we have any dollar responsibility? I think we do have a dollar responsibility. As a matter of fact, it was a very extensive study done by a distinguished mathematician from the University of Stanford that indicated that if you took the market-value losses, the fair rental value, based on land only over the years, there was a restitution due for over $250 million. Now that clearly is not right, that in this day and age, that this cannot be, and furthermore, in 1946, all nations had somwhat partial restitution.

However, since 1946, $200 billion of additional unfair losses were piled up by the Indians.

So in keeping with other settlements, consistent with the policy Congress has set up in other land settlements, an agreed figure of $35 million, so in brief, Mr. Speaker, we are facing up to the reality. This nation was badly treated. Something ought to be done, and there is a consistent policy of the Congress set up by Congress that there will be settlements; there will be just settlements, and $35 million is in keeping with this.

I appreciate the time the Members have let me spend here.

The most important thing is we are now on the edge of moving forward. The attitude of the people in the community, the attitude of the nation is sensational, if I might say so. These people want to work together. Without a lease, they cannot. With a lease, they may, and I hope that Congress will help pass H.R. 5367.

Mr. CAMPBELL of Colorado. Mr. Speaker, I yield 2 minutes to the gentleman from New Mexico [Mr. Richardson].

Mr. RHODES. Mr. Speaker, I yield such time as she may consume to the gentlewoman from Nevada [Mrs. Vucanovich].

(Mrs. VUCANOVICH asked and was given permission to revise and extend her remarks.)

Mrs. VUCANOVICH. Mr. Speaker, I rise in support of H.R. 5367, the Seneca Nation Settlement Act of 1990, not just as a cosponsor, but as an advocate for the right thing to do.

Mr. Speaker, in the later 1800's the Seneca Nation was coerced into leasing land they owned to immigrants and settlers looking for a new life in the area now known as Salamanca, NY. These leases, as my colleague from New York pointed out, were only a few dollars a year, with no provisions for an adjustment with time.

Because the Seneca Nation was locked into such leases for over a century, it has been estimated that they have lost somewhere in the neighborhood of $250 million. The Seneca request for $60 million, with a Federal share of $35 million, is more than fair; and an amount far less than the possible result of a long and costly legal battle.

Mr. Speaker, this bill represents more than just a cost efficient solution to right a longstanding wrong. This bill represents cooperation, hardwork, and foresight on the part of the Seneca Nation, as well as that of the community.

Mr. Speaker, I urge my colleagues' support for H.R. 5367, the Seneca Nation Settlement Act of 1990, a bill supported by the Seneca Nation and the community of Salamanca, NY.

Mr. RHODES. Mr. Speaker, I yield 2 minutes to the gentleman from New York [Mr. Horton], the dean of the New York delegation.

(Mr. HORTON asked and was given permission to revise and extend his remarks.)

Mr. HORTON. Mr. Speaker, I am pleased to join with my colleagues today to urge prompt passage of the Seneca Nation Settlement Act of 1990 sponsored by the gentleman from New York [Mr. Houghton], whose district adjoins mine to the south. Mr. Houghton has worked hard at putting this legislation together.

When most people think of New York, they think of New York City. Others who think about upstate New York, think about Rochester, Syracuse, Niagara Falls, and the Finger Lakes. What surprises many people is the large number of native Americans who still call upstate New York home. What is even more surprising to some is that there are still land disputes after all of these years.

There are currently no less than five Indian land claims being pursued in the Empire State. Today we have a chance to settle one of these disputes in a peaceful, democratic manner.

The gentleman from New York [Mr. Houghton] has worked very hard at putting together a package acceptable to all parties. He has been aided in his efforts by New York's two Senators. The legislation was unanimously endorsed at the last meeting of the New York congressional delegation, which I chair.

In looking over the content of this agreement, I noticed its fairness to the Seneca Nation, to the citizens of Salamanca, NY, and to the rest of the taxpayers of our State and Nation. I understand that great pains were taken during the negotiations to ensure that all parties

Mr. McHUGH. Mr. Speaker, I rise in support of the Seneca Nation Settlement Act and urge my colleagues to support it. I congratulate the gentleman from New York [Mr. Houghton] for his fine efforts in bringing this settlement bill to the floor.

Today we have the opportunity to vote for a bill that resolves long standing grievances and disputes in a peaceful manner. It addresses the inequities of the past with regard to the Seneca Nation and restores the compact of trust we have with the Senecas. It allows the city of Salamanca, NY and its surrounding villages to look to the future in a spirit of cooperation with the Seneca Nation.

Mr. Speaker, I think we have a responsibility to go forward with this legislation. Nearly 100 years ago, these lands were taken from the Seneca Nation when the property was leased to the State of New York without the Nation's consent. Although the New York State courts invalidated the leases, Congress overrode the courts and extended the leases for 99 years. The original terms of the leases set unconscionably low rents and there are no provisions to update them to reflect fair rents. Consequently, the Seneca Nation has been deprived of an equitable return for use of its land.

These leases will now expire in 1991. Both the Seneca Nation and the city of Salamanca would like to sign new lease agreements. However, before this can be accomplished, the Seneca Nation has asked for a settlement due to the inequities of the past. This legislation is intended to implement that request.

Under the settlement, the Federal Government would provide a mix of economic development aid and cash totaling $35 million to the Seneca Nation. New York

State would provide $25 million. This bill authorizes the Federal share of that $60 million settlement, which represents less than 25 percent of the amount that the Seneca Nation could have received if the rents had been set at fair market value.

Without this legislation, we cannot hope to negotiate the new leases for Salamanca and the surrounding communities. With this legislation, the people of the Salamanca area and the Seneca Nation can work toward building for the future.

Mr. Speaker, I urge my colleagues to support this bill. We have an obligation to the Seneca Nation which must be fulfilled. This is a fair way to do it.

Mr. CAMPBELL of Colorado. Mr. Speaker, I think it is clear that this bill does have a very great degree of bipartisan support. In the essence of time, I will not try to congratulate every person that worked so hard on it, but I would like to reiterate what my colleagues have said, that without the help of the gentleman from New York [Mr. Houghton] and his sensitivity and hard work, this bill would not be here on the floor today. I urge my colleagues to support it.

MR. NOWAK. MR. SPEAKER, I AM MOST PLEASED TO SUPPORT H.R. 5367, A BILL WHICH WILL PROVIDE A LONG-AWAITED SETTLEMENT WITH THE SENECA NATION OF INDIANS FOR PAST INEQUITIES, AND RESOLVE THE UNCERTAINTIES THAT HAVE BEEN AFFLICTING THE CITY OF SALAMANCA, NY.

REPRESENTATIVE HOUGHTON IS TO BE COMMENDED FOR HIS UNTIRING EFFORTS TO BRING THE PARTIES TOGETHER AND TO FORMULATE THE LEGISLATION TO CONCLUDE

(Mr. RICHARDSON asked and was given permission to revise and extend his remarks.)

Mr. RICHARDSON. Mr. Speaker, I will not take the full 2 minutes. I thank the gentleman for his generous time.

Mr. Speaker, I am here to offer support as a westerner with a large Indian population to my colleague from New York with undoubtedly a smaller Indian population, but nonetheless he is doing simple justice to an issue that is very important to him.

I commend the gentleman from New York [Mr. Houghton] for his leadership and his work and his dignity and his friendship.

I think this is an important bill. The case is not dissimilar to many cases in my home State where native American tribes have been defrauded of land and water by acts and omissions of the U.S. Government.

With that, I urge support for this important legislation, commend my colleague and all of his colleagues from New York that I see here, the gentleman from New York [Mr. McHugh] and the gentleman form New York [Mr. LaFalce]. I urge passage of this legislation.

THIS LEGISLATION OFFERS A FARSIGHTED SOLUTION TO SERIOUS INJUSTICES EXPERIENCED BY THE SENECA NATION OF NEW YORK. DUE TO ANACHRONISTIC LEASE AGREEMENTS WHICH WERE NOT CONSENTED TO BY THE SENECA NATION, THE TRIBE IS ESTIMATED TO HAVE LOST $250 MILLION.

THIS CASE IS NOT DISSIMILAR TO CASES IN MY HOME STATE OF NEW MEXICO WHERE NATIVE AMERICAN TRIBES HAVE BEEN DEFRAUDED OF LAND OR WATER BY ACTS AND OMISSIONS OF THE U.S. GOVERNMENT.

THE ORIGINAL LEASE AGREEMENT, STILL IN EFFECT, WAS SIGNED BY PRESIDENT GEORGE WASHINGTON, [*H9289] OVER 200 YEARS AGO. THIS TREATY WAS RULED ILLEGAL BY A NEW YORK STATE COURT BUT THAT DECISION WAS OVERTURNED BY AN ACT OF CONGRESS. AS A RESULT, A FRAUDULENT AGREEMENT HAS BEEN THE BASIS OF LEASES ON SENECA LAND.

CONGRESS COULD DECIDE NOT TO ACT TODAY AND TO ALLOW THE COURTS TO PURSUE THE ISSUE. INDIAN CLAIMS CASES ARE COSTLY, LENGTHY, AND VERY OFTEN SUBSTANTIAL DAMAGES ARE AWARDED TO THE CLAIMANT. THE PRICE TAG COULD RUN AS HIGH AS $250 MILLION PLUS.

ON THE OTHERHAND, CONGRESS COULD CHOOSE TODAY TO REDRESS A SERIOUS WRONG. TO SETTLE THIS CLAIM AND ALLOW THE TRIBE TO RENEGOTIATE ITS LEASE AGREEMENTS NEXT YEAR. THIS WILL ALLOW THE RELATIONSHIP BETWEEN THE SENECA NATION AND THE STATE OF NEW YORK AND ITS CITIZENS TO MOVE FORWARD IN A POSITIVE LIGHT.

MR. SPEAKER, THIS SETTLEMENT IS WORTHY OF OUR SUPPORT. I COMMEND THE GENTLEMAN FROM NEW YORK [MR. HOUGHTON] FOR HAVING INITIATED THIS IMPORTANT LEGISLATION AND I ASK MY COLLEAGUES TO SUPPORT IT.

were treated with respect and dignity. The driving force of the negotiations was to find an agreement which was agreeable to all parties. This legislation does just that.

I hope we can pass this bill today for several reasons. On an immediate level, time is running out. The current leases expire in a matter of months. This bill is needed to avert a great deal of hardship and frustration for the Senecas and the people of Salamanca.

Furthermore, I hope this legislation and the negotiations which produced it can serve as a model for the other outstanding land claims, two of which lie at least partially in my district. It has been my policy not to support any settlement unless the local governments sign off on the agreement. In the Seneca situation, that criterion has been met.

I commend the gentleman from New York [Mr. Houghton] for his persistence in resolving this matter. He has worked hard to ensure that this package is fair, which it is. I urge my colleagues to join with us in passing this worthy and needed legislation.

Mr. CAMPBELL of Colorado. Mr. Speaker, I yield 2 minutes to the gentleman from New York [Mr. LaFalce], the distinguished chairman of the Small Business Committee.

(Mr. LaFALCE asked and was given permission to revise and extend his remarks.)

Mr. LaFALCE. Mr. Speaker, I would like to commend my colleague from New York, whose concerns and hard work have brought this legislation to the floor for our consideration. Were it not for his outstanding work, this bill would not be on the floor today. This bill is a model for resolving disputes and enlisting the cooperation of city, State, and Federal Governments.

Mr. Speaker, I am a strong supporter and cosponsor of H.R. 5367, the Seneca Nation Settlement Act of 1990. This bill provides a just and adequate compensation for the Seneca Nation and constitutes a very reasonable Federal obligation. The funds in this bill will foster economic growth for the entire area—including the Seneca Nation lands and the city of Salamanca—and provide a positive solution to a longstanding dispute. It is a balanced bill that redresses the past and has the foresight to invest in the future.

This bill provides Federal sums to compensate the Seneca Nation for 3,000 leases that were obtained and perpetuated without the consent of the rightful owners--the Senecas. For nearly 99 years, the Senecas have been receiving minuscule payments averaging $1 to $3 per year per parcel of land. Clearly, the Senecas deserve appropriate compensation.

There have been claims that this legislation is inappropriate and unjustified: that the Federal Government does not bear financial responsibility for rectifying the problems that exist and that the overall level of spending is too high. But this bill is a legitimate and proper policy choice that is both compassionate and prudent.

First, the Federal Government does bear responsibility for the unjustifiably low rates of return given to the Seneca Nation for unjust leases. Although a New York State court rules that the original lease agreement was without the consent of the Senecas, and therefore illegal, Congress overruled the court and extended the agreement for 99 years. Furthermore, the Federal Government, not the States, is charged with the protection of Indian interests. Thus, this legislation is the proper jurisdiction of this body.

Second, the overall spending contained in the bill is not exorbitant and is, quite frankly, a prudent, cost-saving measure. The total Federal Government share—$35 million—is significantly less than the $250 million amount cited by a Stanford economist as the revenue lost by the Senecas as a result of congressional action. Furthermore, this bill is a one-time payment. By accepting this compromise, the Senecas relinquish their ability to further litigate these past wrongs. Thus, this compensation is modest, fair, and protects the Federal Government from hugely expensive legal battles.

Finally, this bill includes funds specifically designed to promote economic growth in the region. The Federal Government will contribute $5 million and New York will provide $9 million [*H9290] to this package. Money designated for economic incentives comes with a detailed plan for its distribution to insure it's proper and most productive use. I urge my colleagues to approve this measure.

Mr. RHODES. Mr. Speaker, I yield 2 minutes to the gentleman from New York [Mr. Martin].

(Mr. MARTIN of New York asked and was given permission to revise and extend his remarks.)

Mr. MARTIN of New York. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I also thank the gentleman from Colorado for his leadership in the committee.

I rise not only as a New Yorker but as a former member of the Committee on the Interior and as an admirer of the Congressman who represents Salamanca, the gentleman from New York [Mr. Houghton], for all of his work on this particular issue.

Back some 12 years ago as a member of the New York State Assembly, there was a task force which met in Salamanca, and among the things we were considering was this very difficult problem with the 99-year leases and the tension that built up among the people of the community and the Seneca Nation as to what would happen when the leases expired.

Under the best circumstances, to have a solution to a problem like this, it requires the efforts of a lot of people, and the negotiations between the Seneca Nation and the city of Salamanca, the county officials, the State officials, and the Federal officials have been something that I think we could all learn a lot from.

Involved in this process at every step and particularly when it comes to bringing a bill to the floor requires the leadership of the Member of Congress representing the district, and I think it is a tribute to the gentleman from New York [Mr. Houghton], a Member who is very highly respected in this Chamber, that we come to this result.

I think it should be pointed out that in the other body there is an identical piece of legislation that is awaiting consideration, and we would hope, after the speedy consideration of the legislation offered by the gentleman from New York [Mr. Houghton] in this body, that the Senate would bring their bill and we can bring this to a conclusion, and that conclusion should bring not only our thanks and our admiration but certainly the admiration and the thanks for all of those whose lives are so directly affected.

Mr. CAMPBELL of Colorado. Mr. Speaker, I yield 2 minutes to the gentleman from New York [Mr. McHugh].

(Mr. McHUGH asked and was given permission to revise and extend his remarks.)

THE DIVISIVE ISSUES. THE SETTLEMENT REQUEST IS A FAIR ONE, AND THE FEDERAL GOVERNMENT SHOULD MEET ITS PAST DUE RESPONSIBILITIES TO PROVIDE FOR THE INDIAN INTERESTS.

IMMENSE THOUGHT, NEGOTIATION EFFORT, AND GIVE-AND-TAKE ON ALL PARTS, HAVE GONE INTO REACHING THIS AGREEMENT, AND I HOPE THE LEGISLATION WILL BE PROMPTLY PASSED, WITH SWIFT SENATE ACTION, AND PRESIDENTIAL SIGNATURE FOLLOWING.

THE FOLLOWING EDITORIAL FROM THE BUFFALO NEWS POINTS UP THE NEED FOR ACTION, AND THE JUSTICE OF THE PROPOSED SOLUTION.

* * *

Mr. CAMPBELL of Colorado, Mr. Speaker, I have no further requests [*H9291] for time, and I yield back the balance of my time.

Mr. RHODES. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. Mazzoli). The question is on the motion offered by the gentleman from Colorado [Mr. Campbell] that the House suspend the rules and pass the bill, H.R. 5367, as amended.

The question was taken: and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

APPENDIX F(17-a)

Congressional Record—Senate (1990)

Congressional Record—Senate

Tuesday, July 24, 1990;
(Legislative day of Tuesday, July 10, 1990)

101st Cong. 2nd Sess.

136 Cong Rec S 10455

REFERENCE: Vol. 136 No. 96

TITLE: STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

SPEAKER: Mr. D'AMATO; Mr. MOYNIHAN

TEXT:

[*S10455] By Mr. MOYNIHAN (for himself and Mr. D'Amato):

S. 2895. A bill to provide for the renegotiation of certain leases of the Seneca Nation, and for other purposes; to the Select Committee on Indian Affairs.

SENECA NATION SETTLEMENT ACT

Mr. MOYNIHAN. Mr. President, I am most pleased to join with my colleague Senator D'Amato in introducing a bill to provide compensation to the Seneca Nation of Indians for inequities resulting from past lease agreements with the city of Salamanca, NY. Ninety percent of Salamanca is built on land leased from the Seneca Nation.

The involvement of the Federal Government in these lease arrangements spans more than a century. In 1875, Congress approved leases from the Senecas of Cattaraugus County, NY, to several railroads. The renewal of these leases was again approved by Congress in 1890 for a term of 99 years. The terms, however, did not include any provision for rent increases.

Consequently, the Seneca Nation still receives 1890's rents. Some of the lessees, now many of the homeowners and businesses in the city of Salamanca, paid as little as $1 per year. These leases, some 3,000, are to expire on February 19, 1991.

We took advantage. We did not provide fair value for these leases. We now ought to meet our responsibilities to the Senecas. The agreement reached among Salamanca, New York State, Congressman Houghton, and the Senecas calls for a $60 million payment; $35 million from the Federal Government and $25 million from New York State.

* * *

[Statute omitted]

* * *

Mr. D'AMATO. Mr. President, I join with Senator Moynihan in introducing legislation which will help to resolve a longstanding lease issue between the Seneca Nation and the city of Salamanca in New York State. Our legislation is called the Seneca Nation of New York Settlement Act. Our colleague, Representative Houghton, is introducing identical legislation in the House today.

Roughly 90 percent of the city of Salamanca lies inside of the Allegany Reservation, home to the Seneca Indians. Back in 1892, the people of Salamanca entered into a 99-year lease with the Senecas. The terms of the lease required annual payments of $17,000 to the Senecas. The lease is set to expire in February 1991.

For nearly a decade, the Senecas and the city of Salamanca have been negotiating the terms for a new lease. The disagreements that have characterized the

negotiations over the past 10 years created an air of uncertainty about the city's future that has discouraged investment and depressed real estate prices. Earlier this month, the parties finally reached agreement on the terms of the new lease. Our legislation embodies this agreement.

The agreement consists of two parts:

First, future lease agreements: These agreements must be resolved by the city of Salamanca and the Seneca Nation. The Federal and State governments will not directly or indirectly subsidize any future lease agreements.

Second, $60 million for past lease payment inequities: $25 million from New York State and $35 million from the Federal Government.

Three million from the Federal portion of the $60 million settlement will be set aside in an interest-bearing account—with the principal to be untouched and the interest targeted at economic development in the Salamanca area. Specifically: First, one-third of the interest is to be used by the Joint Venture Commission for Economic Development. This organization has equal representation from the city and the nation; and second, two-third's of the interest is to be used by the city of Salamanca for economic development—whether it be capital improvements or money used to attract new businesses.

This legislation is important to the Seneca people as well as the city of Salamanca. I urge my colleagues to join with myself and Senator Moynihan in expeditiously moving this bill through the Senate.

APPENDIX G(1)

99 Year Lease Exemplar (1892-1940's)

LEASE *NO.* _____ LIBER

THIS AGREEMENT, Made between the SENECA NATION OF INDIANS, of the State of New York, party of the first part, and _____ of the town of _____ party of the second part,

See Liber No. ____ of Miscellaneous Records, Page ____ for Assignment.

WITNESSETH, Whereas the party of the first part has been authorized to lease and renew leases of land situate within certain villages upon the Allegany Reservation, by two Acts of Congress, both entitled "An Act to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany Reservations, and to confirm existing leases," one approved February 19th, 1875, and the other approved September 30th, 1890.

And the party of the second part having applied for the renewal of a certain lease heretofore executed by said Seneca Nation of Indians to_____ and dated the _____ day of _____ 188 (9)_____, and being such a lease as is provided for in said Acts of Congress.

And the party of the first part having, by a resolution of its Councilors, adopted in Council, held at _____ on the _____ day of _____, 189____, authorized the renewal of said lease for the period of Ninety-Nine years, and upon the payment of an annual rental of _____ dollars.

NOW, THEREFORE, the party of the first part, pursuant to the authority of the said Acts of Congress, hereby grant, demise and lease to the party of the second part,

ALL THAT TRACT of land situate on the Allegany Reservation, in the County of Cattaraugus, in the village of _____ bounded as follows:

(ILLEGIBLE)

for the term of Ninety-Nine years, which term will expire on the _____ day of _____ 199____ for the annual rental of _____ dollars, to be paid in cash annually in advance to the Treasurer of the Seneca Nation of Indians, their successors, assigns or legal representatives, on or before the nineteenth day of February in each and every year, during the continuance of this lease.

IN CONSIDERATION of the foregoing, the party of the second part covenants and agrees to pay to the party of the first part the said annual rental in cash at the times and in the manner above stated. Also to quit and deliver up to the party of the first part said land and premises at the expiration of said term, unless he shall procure this lease to be renewed in the manner provided by said Acts of Congress.

And it is further agreed that if the rent, or any part thereof hereby provided for, shall not be paid as herein provided, that the party of the first part may re-enter the said premises, or resort to any lawful remedy, to remove all persons therefrom.

IN WITNESS WHEREOF, the parties hereto have hereunder set their hands and seals, and the seal of the said Nation, this _____ day of _____ 189____.

Recorded, examined and compared with the original, the _____ day of _____ 189___ at _____ Clerk.

Seal of the Nation.

_____

President Seneca Nation of Indians.

_____ [SEAL]

Lessee.

STATE OF NEW YORK }
COUNTY OF CATTARAUGUS. } ss.

On this _____ day of April one thousand eight hundred and ninety _____ before me personally came _____ President of the Seneca Nation of Indians, and _____ each known to me to be the individuals described in and who executed the foregoing lease, and acknowledged that they executed the same.

APPENDIX G(2)

99 Year Lease Exemplar (1940's +)

LEASE NO. F-77
Former Lease No. E-142

THIS LEASE, made and entered into between the Seneca Nation of Indians of the State of New York, party of the first part, hereinafter designated as the Lessor, and Carl H. Haas of 98 East State Street, Salamanca, New York, party of the second part, hereinafter designated as the Lessee, WITNESSETH:

1. For and in consideration of the payment of the rental hereinafter specified and the performance and fulfillment of the terms and conditions of this agreement by the Lessee, the Lessor, pursuant to the authority conferred by Congress and the Constitution and laws of the Seneca Nation of Indians, hereby leases to the Lessee the following described premises situate on the Allegany Reservation in the County of Cattaraugus, State of New York and within the City of Salamanca being the premises known as 98 East State Street and more particularly described as follows:

Bounded and described as follows: north by the center of East State Street; east by lands formerly owned by C. E. H[illegible]ckley; south by lands of Patrick Ledden and west by lands formerly owned by Marble, the same being the premises conveyed to Carl H. Haas by deed recorded in Liber 268 of deeds, Page 207, Cattaraugus County Clerk's Office.

* * *

excepting therefrom all timber and all oil, gas and other minerals.

TO HAVE AND TO HOLD the above described premises unto the Lessee from the date hereof until the 19th day of February, 1991, with the privilege to renew this lease for a period not exceeding 99 years, on such conditions, as may be agreed upon in accordance with the provision of the Act of February 19, 1875, c. 90, sec. 3, 18 Stat. 330, as amended by the Act of September 30, 1890, c. 1132, 26 Stat. 558.

2. The Lessee in consideration of the leasing of said premises, covenants and agrees to pay to the Superintendent of the New York Indian Agency for the use and benefit of the Seneca Nation of Indians beginning on February 19, 1944, and on the 19th day of February of each year thereafter, an annual rental in advance of: (a) _____, representing _____% of the value of the land exclusive of improvement as assessed for tax purposes for the year 1939, as shown on the assessment roll of the City of Salamanca for that year; ~~(b) $5.00 representing the minimum rental for improved property in the City of Salamanca; (c) $2.50 representing the minimum rental for unimproved property in the City of Salamanca.~~

It is agreed and stipulated that if the population of the City of Salamanca, as measured by the federal census for 1960, increases by 20 per cent over the enumeration shown by the federal census for 1940 the annual rental for the remainder of the term commencing February 19, 1962, and expiring February 19, 1991, shall be computed at the rate of 2½% of the value of the land exclusive of improvements as assessed for tax purposes for the year 1960, as shown on the assessment roll of the City of Salamanca for that year. If the Lessor deems the tax value for the year 1960 to be unsatisfactory, at the option of the Lessor the rental to be paid for the

remainder of the term commencing February 19, 1962, shall be determined in the following manner: by a Board of three arbiters, one selected by the Mayor of the City of Salamanca, one by the Tribal Council of the Seneca Nation, and the third selected by those two. If those two cannot agree upon a third arbiter, then and in that event a Judge of the United States District Court for the Western District of New York is hereby empowered to appoint a third arbiter upon the application of either the Lessor or the Lessee, and the rental agreed upon by any two of said arbiters shall be conclusive as in the amount of the annual rental which shall be paid for the remainder of the term beginning February 19, 1962, and expiring February 19, 1991.

It is further agreed that in no event shall the annual rental be less than the sum specified in Paragraph No. 2 of this lease and that in the event improvements are erected upon any unimproved tracts described in this lease, the minimum rental shall be $5.00 per annum commencing with February 19th of the year next following the erection of the improvements.

3. The Lessee may sell or assign this lease in whole or in part, provided the sale or assignment shall be by an instrument in writing under the terms of which the purchaser or assignee expressly assumes all the obligations of the Lessee under this lease. Within 30 days after such sale or assignment a copy of the instrument bearing the endorsement in writing of the transferee accepting the obligations of the lease shall be filed by the Lessee at the office of the Superintendent of the New York Indian Agency at Salamanca, New York, or at such other office in the City of Salamanca as may be designated by the Secretary of the Interior. Subject to the provisions of Paragraph No. 4 herein the Lessee

shall be relieved of all liability for rent accruing on the premises transferred after the date of such filing. When the lease or any part of it is transferred by will or inheritance without a will an instrument in writing showing the succession and expressly assuming all the obligations of the Lessee shall be filed as hereinbefore provided by the person or persons succeeding to the Lessee's interest.

4. Where a portion of the lease is sold or assigned both the Lessee and the purchaser or assignee shall be jointly and severally liable for all the rent herein specified, provided, however, that the Lessee shall be relieved of all liability for the rent on the portion sold and the liability of the purchaser or assignee shall be limited to the portion purchased or assigned, upon fulfillment of all of the following conditions: (1) that a copy of the instrument of transfer, properly endorsed and filed with the Superintendent in accordance with Paragraph No. 3 herein, shall contain or be accompanied by an agreement as to the rent apportioned in that part of the premises transferred and the rent apportioned to that part of the premises not transferred; (2) that the aggregate of the apportioned rents so designated shall not be less than the total amount of the whole rent before apportionment; and (3) that the apportionment of the rent shall conform to the true value of the respective tracts. If the apportioned rents so designated are not satisfactory to the Lessor, they may be rejected and new rents designated by the Lessor. The apportioned rents accepted by the Lessor shall be the annual rentals for the unexpired term of the lease provided that the minimum rental for each improved portion shall be $5.00 per annum and the minimum rental for each unimproved portion shall be $2.50 per annum so long as said portion remains unimproved.

5. It is agreed and stipulated that the Lessor may at any time during the term of this lease enter upon said premises for the purposes of inspection, for the removal of merchantable timber and for the exploration, development and removal of gas, oil and other minerals, provided that the Lessee shall be fully compensated for all damages resulting from such entrances and that adequate security approved by the District Judge aforesaid shall be given for the payment thereof prior to such entrances and provided further that before an oil or gas well is drilled on said premises adequate security approved by the District Judge aforesaid shall be given for the payment of all damages resulting from diminution in value, caused by drilling or operating an oil or gas well, to any property lying within 200 feet of said well and held under this or any other lease with the Seneca Nation containing the same provision; provided further that no shade trees or ornamental trees shall be removed by the Lessor from any improved premises and no timber shall be considered merchantable unless suitable for sawing into lumber.

6. The Lessor agrees to mail to the Lessee or to the person or persons succeeding to his interest as shown by the records of the New York Indian Agency between January 15 and January 30 of each year a notice setting forth the amount of the rent to become due on this lease on February 19 thereafter, provided that the failure to mail such a notice shall not in any respect relieve the Lessee or his successors of the obligation to pay rent in accordance with the terms of this lease.

7. It is agreed and stipulated that upon default in the payment of rent or upon any breach of any of the conditions of this lease the Lessor may declare the term ended and may re-enter and possess the premises.

The right to re-enter and to recover the possession of the property for the non-payment of rent shall be exercised and enforced upon the following procedure:

a. When the annual rent is not paid on or before six months after the due date (August 19) of any year, the Lessor may maintain an action to recover the property leased without demand of the rent in arrears or re-entry of the property.

b. An action to recover the property may be commenced and maintained at any time after default in the payment of rent provided the Lessor at least fifteen days before the action is commenced serves upon the Lessee a written notice of its intention to re-enter. Said notice may be served (1) by leaving it at the dwelling house on the premises with a person of suitable age and discretion, or (2) if the defendant cannot be found with due diligence and has no dwelling house on the premises whereat a person of suitable age and discretion can be found, by posting it in a conspicuous place on the premises.

c. At any time before final judgment for the Lessor is rendered in an action brought under sub-section a or b of Paragraph No. 7 of this lease, the defendant may pay or tender to the Superintendent of the New York Indian Agency or to the Lessor's attorney of record or may pay into court all the rent then in arrears with interest and the costs of the action to be taxed. Thereupon the complaint shall be dismissed.

d. At any time within six months after possession of the property, awarded to the Lessor in such an action, has been delivered to it by virtue of an execution issued upon a judgment rendered therein, the defendant, or any person who has succeeded to his interest, or a mortgagee of the lease, or of any part thereof, who was not in

possession when final judgment was rendered, may pay or tender to the Superintendent of the New York Indian Agency or to the Lessor's attorney of record, or may pay into court, for the use of the Lessor, the amount of rent in arrears, as stated in the judgment, and the costs of the action, with interest and all other charges incurred by the Lessor.

e. Within three months after making the payment or tender, if possession has not been delivered, the person who made it or his representative, may apply to the court for an order that possession of the property be delivered to him; and thereupon, upon proof of the facts, and payment of the sum due by reason of rent occurring since the judgment was rendered, and upon compliance with all other terms to be complied with by the Lessee to the time of the application, the defendant shall be entitled to an order directing that possession of the property be delivered to the applicant, who shall hold and enjoy the same, without any new lease thereof, according to the terms of the original lease. Notice of the application must be served upon the Lessor's attorney of record.

f. In an action for the recovery of real property or the possession thereof, the Lessor, where it recovers judgment for the property, shall be entitled to to recover as damages the value of the use and occupation of the real property recovered for the period after default, but the damages shall not include the value of the use of any improvements made by the defendant or those under whom he claims.

8. The Lessee, for himself, his heirs, executors, administrators, successors and assigns covenants and agrees to quit and deliver up to the Seneca Nation the land and premises at the expiration of the term of this lease unless the term is renewed as herein provided.

9. A condition for the granting of this lease is that the Lessee subjects the estate hereby created to such legal liens and encumbrances which heretofore attached to or affected the prior lease of the premises hereby covered, (which prior lease is No. and granted to), in the same order of priority in which they attached to or affected the prior lease, except that nothing herein contained shall be deemed to re-establish or recreate any lien or encumbrance which has been legally or validly terminated.

10. This lease shall pass by assignment in writing, will, descent, or otherwise in the manner provided by the laws of the State of New York, provided, however, that the rights of any Indian lessee in this lease shall descend as provided by the laws of the Seneca Nation. This lease and all its terms and provisions shall be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

11. The terms and provisions of this lease shall not be waived, modified or changed without the written consent of the Lessor.

IN WITNESS WHEREOF, the Lessor has caused this lease to be executed in duplicate by its duly authorized officer, and its seal to be hereunto affixed this day of , 19 , and the Lessee has hereunto set his hand and seal this day of , 19 .

SENECA NATION OF INDIANS:

By _____ _____
President

_____ _____
Clerk, Seneca Nation of Indians

STATE OF NEW YORK }
} ss.
County of }

On this day of , 19 , before me personally appeared and known to me to be the individual who executed the foregoing lease, and acknowledged the same to be act and deed.

_____
SEAL Notary Public.

STATE OF NEW YORK }
} ss.
County of }

On this day of , 19 , before me personally appeared to me known, who, being by me duly sworn, did depose and say that he is the President of the Seneca Nation of Indians, the Lessor described in and who authorized the execution of this lease; that he knows the seal of the Nation; that the seal affixed to this lease is the seal of the Nation; that it was so affixed by order of the duly elected and authorized Tribal Council of the Nation; and that by like order he signed his name to this lease as President. And on the same day and year before me

personally appeared , to me known, who being by me duly sworn, did depose and say that he is the Clerk of the Seneca Nation of Indians; that he knows the seal of the Nation; that he affixed the seal of the Nation to this lease; that it was so affixed by order of the duly elected and authorized Tribal Council of the Nation; and that by like order he attested the same as Clerk.

_____

Notary Public.

Recorded this day of , 19 .

_____

Recording Officer.

APPENDIX G(3)

50 Year Lease Exemplar

LEASE NO. _____

Former Lease No. _____

THIS LEASE, made and entered into between the Seneca Nation of Indians of the State of New York, party of the first part, hereinafter designated as the Lessor, and NANCY STELLABUTO, party of the second part, hereinafter designated as the Lessee,

WITNESSETH:

1. For and in consideration of the payment of the rental hereinafter specified and the performance and fulfillment of the terms and conditions of this agreement by the Lessee, pursuant to the authority conferred by Congress and the Constitution and laws of the Seneca Nation of Indians, hereby leases to the Lessee the following described premises situated on the Allegany Reservation in the County of Cattaraugus, State of New York and within the City of Salamanca:

> ALL THAT TRACT OR PARCEL OF LAND COMMENCING at a point in the west bounds of Pimlico Avenue, which point is about fifty-eight [58] feet northerly from the south bounds of the Hazard and Walrath tract; thence northerly along the west bounds of Pimlico Avenue fifty [50] feet to the south east corner of Lot 10 of the Hazard and Walrath tract; thence westerly along the south bounds of said Lot 10, about one hundred sixty [160] feet to the south westerly corner thereof; thence southerly and parallel to the west bounds of Pimlico Avenue about fifty three [53] feet to the north west corner of Lot 12 of said tract; thence easterly along the north bounds of said Lot 12 about one hundred sixty [160] feet to the place of commencing; being Lot No. 11 of

Block B and lying on the west side of Pimlico Avenue according to a certain map of lots known as the Walrath and Hazard tract, made by C.C. Chency and filed in the Office of the Clerk of Cattaraugus County, January 30, 1908.

Excepting therefrom all timber and all oil, gas and other minerals.

TO HAVE AND TO HOLD the above-described premises unto the Lessee from the date hereof until the 19th day of February, 2036, it being understood and agreed however, that this lease is subject to and shall become absolutely null and void upon the execution of any master lease between the Seneca Nation of Indians and the City of Salamanca covering the premises hereby leased and the relationship between the parties or their successors, if any, shall thereupon and thereafter be determined under the provisions of such master lease.

2. ANNUAL RENTAL.

2.1 The Lessee, in consideration of the leasing of the above-described premises, covenants and agrees to pay to: (a) the Treasurer of the Seneca Nation of Indians; or (b) the proper official of the City of Salamanca pursuant to the Act of Congress, April 14, 1950, which is set forth at 64 Stat. 442, beginning on February 19, 1986, and on the 19th day of February of each year thereafter, an annual rental in advance in such sum as determined by Lessor according to the following formula:

Assessed Land Value X ____% - Annual Rental
Equalization Rate

2.2 Definitions. For the purpose of this lease and determination of Lessee's annual rental payment, the following terms and conditions are defined as follows:

2.2(a) Assessed Land Value means the assessed value of the land hereby leased to Lessee as determined annually during the term hereof by

the assessor of the City or Town wherein the property is situate.

2.2(b) Equalization Rate means the equalization rate established annually for properties situate in the City of Salamanca by the Board of Equalization and Assessment of the State of New York or its successor.

2.3 Determination of Annual Rental for First Lease Year and Prior Thereto:

2.3.1 The annual rental due under the terms hereof on the ____ day of _____, 19____ for the lease year commencing on that date shall be in the amount of $_____.

2.3.2 Proration of Annual Rental. On the date of the execution of this lease, Lessee paid to Lessor, the receipt of which is hereby acknowledged, rental in the amount of $_____, which rental is based on an annual rental of $_____, prorated and adjusted to reflect Lessee's obligation to pay rental from the date hereof until _____.

3. The Lessee may sell or assign in whole or in part, provided the sale or assignment shall be by an instrument in writing under the terms of which the purchaser or assignee expressly assumes all the obligations of the Lessee under this lease. Within ____ days after such sale or assignment a copy of the instrument bearing the endorsement in writing of the transferee accepting the obligations of the lease shall be filed by the Lessee at the office of the Clerk of the Seneca Nation. Subject to the provisions of Paragraph No. 4 herein, the Lessee shall be relieved of all liability for rent occurring on the premises transferred after the date of such filing. When the lease or any part of it is transferred by will or inheritance without a will, an instrument in writing showing the seccession and

expressly assuming all the obligations of the Lessee shall be filed as hereinbefore provided by the person or persons succeeding to the Lessee's interest.

4. Where a portion of the lease is sold or assigned, both the Lessee and the purchaser or assignee shall be jointly and severally liable for all the rent herein specified, provided however, that the Lessee shall be relieved of all liability for the rent on the portion purchased or assigned, upon fulfillment of all of the following conditions: (1) that a copy of the instrument of transfer, properly endorsed and filed with the Clerk in accordance with Paragraph No. 3 herein, shall contain or be accompanied by an agreement as to the rent apportioned to that part of the premises transferred and the rent apportioned to that part of the premises not transferred; (2) that the aggregate of the apportioned rates so designated shall not be less than the total amount of the whole rent before apportionment; and (3) that the apportionment of the rent shall conform to the true value of the respective tracts. If the apportioned rents so designated are not satisfactory to the Lessor, they may be rejected and new rents designated by the Lessor. The apportioned rents accepted by the Lessor shall be the annual rentals for the unexpired term of the lease determined by the Lessor under the formula set forth in Paragraph No. 2 hereof provided that the minimum rental for each portion shall be determined by the Lessor as provided under the terms of said Paragraph No. 2 of this lease.

5. It is agreed and stipulated that the Lessor may at any time during the term of this lease enter upon said premises for the purpose of inspection, for the removal of merchantable timber and for the exploration, development and removal of gas, oil and other minerals,

provided that the Lessee shall be fully compensated for all damages resulting from such entrances and that adequate security approved by the District Judge for the Western District of New York shall be given for the payment thereof prior to such entrances and provided further that before an oil or gas well is drilled on said premises adequate security approved by the District Judge aforesaid shall be given for the payment of all damages resulting from diminution in value, caused by drilling or operating an oil and gas well, to any property lying within 200 feet of said well and held under this or any other lease with the Seneca Nation containing the same provision; provided further that no shade trees or ornamental trees shall be removed by the Lessor from any improved premises and no timber shall be considered merchantable unless suitable for sawing into lumber.

6. The Lessor agrees to mail to the Lessee or to the person or persons succeeding to his interest as shown by the records of the Clerk of said Nation between January 15 and January 30 of each year a notice setting forth the amount of the rent to become due on this lease on February 19 thereafter, provided that the failure to mail such notice shall not in any respect relieve the Lessee of his successors of the obligation to pay rent in accordance with the terms of this lease.

7. It is agreed and stipulated that upon default in the payment of rent or upon any breach of any of the conditions of this lease, the Lessor may declare the term ended and may re-enter and possess the premises.

The rights to re-enter and to recover the possession of the property for the non-payment of rent shall be exercised and enforced upon the following procedure:

a. When the annual rent is not paid on or before six months after the due date (August 19) of any year, the Lessor may maintain an action to recover the property leased without demand of the rent in arrears of re-entry of the property.

b. An action to recover the property may be commenced and maintained at any time after default in the payment of rent provided the Lessor at least fifteen days before the action is commenced serves upon the Lessee a written notice of its intentions to re-enter. Said notice may be served (1) by leaving it at the dwelling house on the premises with a person of suitable age and discretion, or (2) if the defendant cannot be found with due diligence and has no dwelling house on the premises whereat a person of suitable age and discretion can be found, by posting it in a conspicuous place on the premises.

c. At any time before final judgment for the Lessor is rendered in an action brought under sub-section (a) or (b) of Paragraph No. 7 of this lease, the defendant may pay or tender to the Treasurer of the Seneca Nation or to the Lessor's attorney of record or may pay into court all the rent then in arrears with interest and the costs of the action to be taxed. Thereupon the complaint shall be dismissed.

d. At any time within six months after possession of the property, awarded to the Lessor in such an action, has been delivered to it by virtue of an execution issued upon a judgment rendered therein, the defendant, or any person who has succeeded to his interest, or a mortgage of the lease, or of any part therof, who was not in possession when final judgment was rendered, may pay or tender to the Treasurer of the Seneca Nation or to the Lessor's attorney of record, or may pay into court, for

the use of the Lessor, the amount of rent in arrears, as stated in the judgment, and costs of the action, with interest and all other charges incurred by the Lessor.

e. Within three months after making the payment or tender, if possession has not been delivered, the person who made it or his representative, may apply to the court for an order that possession of the property be delivered to him; and thereupon, upon proof of the facts, and payment of the sum due by reason of rent accruing since the judgment was rendered, and upon compliance with all other terms to be complied with by the Lessee to the time of the application, the defendant shall be entitled to an order directing that possession of the property be delivered to the applicant, who shall hold and enjoy the same, without any new lease thereof, according to the terms of the original lease. Notice of the application must be served uopn the Lessor's attorney of record.

f. In an action for the recovery of real property or the possession thereof, the Lessor, where it recovers judgment for the property, shall be entitled to recover as damages the value of the use an occupation of the real property recovered for the period after default, but the damages shall not include the value of the use of any improvements made by the defendant or those under whom he claims.

8. The Lessee, for himself, his heirs, executors, administrators, successors, and assignees covenants and agrees to quit and deliver up to the Seneca Nation the land and premises at the expiration of the term of this lease.

9. A condition for the granting of this lease is that the Lessee subjects the estate hereby created to such legal liens and encumbrances which heretofore attached

to or affected the prior lease of the premises hereby covered, (which prior lease is No. _____), in the same order of priority in which they attached to or affected the prior lease, except that nothing herein contained shall be deemed to re-establish or recreate any lien or encumbrance which has been legally or validly terminated.

10. This lease shall pass by assignment in writing, will, descent, or otherwise in the manner provided by the laws of the State of New York, provided however, that the rights of any Indian Lessee in this lease shall descend as provided by the laws of the Seneca Nation. This lease and all its terms and provisions shall be binding upon the heirs, executors, administrators, successors and assignee's of the parties hereto.

11. The terms and provisions of this lease shall not be waived, modified, or changed without written consent of the Lessor.

IN WITNESS WHEREOF, the Lessor has caused this lease to be executed in duplicate by its duly authorized officer, and its seal to be hereunto affixed this _____ day of _____, 19____, and the Lessee has hereunto set his hand and seal this _____ day of _____, 19____.

SENECA NATION OF INDIANS _____

_____ _____

President _____

(SEAL)

ATTEST

_____

Clerk, Seneca Nation of Indians

STATE OF NEW YORK)
County of Cattaraugus) ss.

On this ____ day of _____, 19____, before me personally appeared _____ known to me to be the individual who executed the foregoing lease, and acknowledge the same to be _____ act and deed.

SEAL

_____
Notary Public

STATE OF NEW YORK)
County of Cattaraugus) ss.

On this _____ day of _____, 19____, before me personally appeared _____, to me known, who being by me duly sworn, did depose and say that he is the President of the Seneca Nation of Indians, the Lessor described in and who authorized the execution of this lease; that he knows the seal of the Nation; that the seal affixed to this lease is the seal of the Nation; that it was so affixed by order of the duly elected and authorized Tribal Council of the Nation; and that by like order he signed his name to this lease as President. And on the same day and year before me personally appeared _____, to me known, who being by me duly sworn, did depose and say that she is the Clerk of the Seneca Nation of Indians; that she knows the seal of the Nation; that she affixed the seal of the Nation to this lease; that it was so affixed by order of the duly elected and authorized Tribal Council of the Nation; and by like order she attested the same as Clerk.

_____
Notary Public

APPENDIX G(4)

"25 Year Lease to Member of Seneca Nation"

SENECA NATION OF INDIANS

RESIDENTIAL LEASEHOLD FORM

This lease made and entered into between the Seneca Nation of Indians, G.R. Plummer Office Building, P.O. Box 231, Salamanca, New York, hereinafter designated as "Lessor", and JAMES MICHAEL WHITCOMB, member(s) of the Seneca Nation, residing upon the Allegany Indian Reservation, Cattaraugus County, New York, hereinafter designated as "Lessee(s)".

WITNESSETH:

1. *Premises.* Lessor, as authorized by law and in accordance with a resolution adopted by the Seneca Council on this 21st day of April, 1987 hereby leases to the Lessee(s) all that tract or parcel of land situated on the Allegany Indian Reservation, County of Cattaraugus, State of New York, and described as follows:

> ALL THAT TRACT OR PARCEL OF LAND situated in the Town of Great Valley, County of Cattaraugus and State of New York, on the Allegany Indian Reservation, briefly described as follows: BEING THE dwelling house and one (1) acre of land surrounding the same on the South side of the public highway, Route 17, about three-quarters (3/4) of a mile East of Killbuck Corners, New York, being sometimes known as the Kearney premises formerly owned by William Hoag and devised to Henrietta Hoag Guilfoyle. The boundaries of said property are as follows:

On the West by the Kearney Creek, Four Hundred Fifty (450) Feet; on the North by the State Highway, One Hundred Ninety-Two (192) Feet; on the South by a raised bank, One Hundred Sixty-Five (165) Feet; and on the East, Four Hundred (400) Feet along the dirt road.

2. *Use of Premises.* The object of this Lease is to enable the Lessee(s) to construct, improve and/or maintain a dwelling and related structures on the premises, and otherwise to use or occupy said premises for residential purposes.

3. *Term.* Lessee(s) shall have and hold the premises for a term of twenty-five (25) years beginning on the effective date of this Lease. This Lease shall automatically and without notice renew for an additional term of twenty-five (25) years on the same terms and conditions contained herein. This Lease may not be terminated by either or both parties during its initial or renewal term if, and as long as, the Lease and/or any improvements on the premises, or any interest therein, are mortgaged or otherwise pledged as security for any loan in accordance with the provisions hereof, unless consent in writing to such termination is given by the lender and, when FHA insurance is in force, by the Federal Housing Administration. This Lease shall not be subject to any forfeiture or reversion and shall not be otherwise terminable, if such event would adversely affect any interest in the premises, including improvements thereon, acquired in accordance with the provisions hereof by the holder of any mortgage or other lien, or of any purchaser at a foreclosure sale under such mortgage (or lien) or under any conveyance given in lieu of foreclosure, or of any hold subsequent to such purchase.

LIBER 870 PAGE 829

4. *Rent.* The improvements of housing for Seneca families is a public purpose of the Lessor. The consideration for this Lease is (1) the said purpose, (2) the promise, hereby given, of Lessee(s) to pay the Lessor rent at the rate of One Dollar ($1.00) for each twenty-five (25) year term, payment to be made each term in advance, (3) the extinguishment, hereby agreed to be Lessee(s), or any and all use rights heretofore held by the Lessee(s) in the premises, so that Lessee(s) shall hereafter hold rights only by virtue of this Lease, and (4) other good and valuable considerations, the receipt of which is hereby acknowledged by Lessor. It is agreed that there shall be no adjustment of the rent if the Lease is terminated before its term otherwise would expire or in the event that any part of the premises is taken by condemnation for highway or other public purposes.

5. *Improvements.* All buildings or other improvements now existing or hereafter constructed on the premises shall be the leasehold property of the Lessee(s) during the term of this Lease, including any extension or renewal thereof.

6. *Use Rights.* Upon expiration of this Lease, or upon its termination in accordance with the terms hereof, Lessee(s) or any successors in interest shall be entitled to use rights in the premises if qualified under the laws and customs of the Seneca Nation. If not so eligible, Lessee(s) and any successors in interest shall, upon demand, surrender to Lessor upon expiration or other termination of this Lease complete and peaceable possession of the premises and all improvements thereon, which shall be the property of the Seneca Nation.

7. *Limitations.* (a) No member of Congress or any delegate thereto or any Resident Commissioner shall be admitted to any share or part of this Lease or to any

benefit. (b) The Lessee(s) agree(s) not to use or cause to be used any part of said premises for any unlawful conduct or purpose.

8. *Quiet Enjoyment.* Lessor agrees to defend the title to the premises and also agrees that Lessee(s) and any successors in interest shall peaceably and quietly hold, enjoy and occupy the premises for the duration of this Lease without any hindrance, interruption, ejection or molestation by Lessor or by any other person or persons whomsoever.

9. *Inheritance.* This Lease may be transferred by will or by intestate inheritance in accordance with the laws and customs of the Seneca Nation.

10. *Assignment.* Except as otherwise provided herein, Lessee(s) shall not assign this Lease without the prior written consent of the Lessor, and if this Lease and/or any improvements on the premises are mortgaged or pledged as security for a loan, without the written approval of the lender and, when FHA insurance is in force, of the Federal Housing Administration, Lessee(s) may assign this Lease or deliver possession of the premises, including any improvements thereon, to the lender, its successors in interest, or FHA, as the case may be, if Lessee(s) default(s) in any mortgage or other loan agreement for which the Lease and/or improvements on the premises are pledged as security, and, in such event, the lender, its successors in interest, or FHA, in turn may transfer this Lease or possession of the premises to a successor Lessee. Nothing in this Lease shall prevent the Lessee(s) from executing and recording a mortgage, declaration of trust and/or other security instrument as may be necessary to obtain financing for the construction and/or improvement of a dwelling and related structures, or shall prevent the mortgagee or

other lender from foreclosing or instituting other appropriate proceedings under law in the event of default on any mortgage or other loan agreement by the Lessee(s). Except in cases involving loans for home construction or home improvement by a bank or other recognized lending institution, where no such consent or approval shall be required, Lessee(s) may not execute a mortgage, declaration of trust or other security instrument pledging their interest in this Lease or any improvements on the premises without the prior consent of Lessor.

11. *Option.* In the event of default by the Lessee(s) on any improvements on the premises are pledged as security, Lessor shall have the right of first refusal to acquire the Lessee's interest in the premise (subject to all valid liens and encumbrances) upon (a) payment of all sums then in arrears, and (b) either payment of the balance of the loan or assumption of the mortgage. Said rights of first refusal may be exercised at any time within thirty (30) days after notice in writing from the lender of the Lessee's default, which notice shall be given before the lender invokes any other remedies provided under the mortgage or by law, and shall be exercised by notice in writing from the Lessor to the Lessee(s) and the lender; provided, however, that the Lessee(s) shall have fifteen (15) days from the date of the latter notice to cure the default. The estate acquired by the Lessor through exercise of said right of first refusal shall not merge with any other estate or title held by the Seneca Nation as long as this Lease and/or any improvements on the premises, or any interest therein, are mortgaged or otherwise pledged as security for any loan, and said estate shall remain subordinate to any valid and subsisting mortgage or other security instrument.

LIBER 870 PAGE 831

12. *Effective Date.* This Lease and all its terms and provisions shall be binding upon the heirs, successors, executors, administrators and assigns of the Lessee(s) and any successor in interest to the Lessor, and shall take effect on the 21st day of April 1987.

(Seal)

ATTEST: THE SENECA NATION OF INDIANS

DARLENE P. MILLER
CLERK

BY ROBERT C. HOAG
PRESIDENT

WITNESS: JAMES MICHAEL WHITCOMB
(LESSEE) James Michael Whitcomb

SHERRIE J. JOHN

_____
(LESSEE)

STATE OF NEW YORK)
COUNTY OF CATTARAUGUS) ss.
ALLEGANY INDIAN RESERVATION)

On this 11th day of June, 1987, before me personally appeared JAMES MICHAEL WHITCOMB known to me to be the individual who executed the foregoing leasehold, and acknowledged the same to be his act and deed.

BERT R. DOHL
NOTARY PUBLIC

BERT R. DOHL
Notary Public,
State of New York
Cattaraugus County
Expires May 31, 1988

LIBER 870 PAGE 832

STATE OF NEW YORK)
COUNTY OF CATTARAUGUS) ss.
ALLEGANY INDIAN RESERVATION)

On this 22nd day of April, 1987, before me personally appeared Robert C. Hoag, to me known, who being by me duly sworn, did depose and say that he is the PRESIDENT of the Seneca Nation of Indians, the Lessor described in and who authorized the execution of this lease; that he knows the seal of the Nation; that the seal affixed to this lease is the seal of the Nation; that it was so affixed by order of the duly elected and authorized Tribal Council of the Nation; and that by like order he signed his name to this lease as President. And on the same day and year before me personally appeared Darlene P. Miller, to me known, who being by me duly sworn, did depose and say that she is the Clerk of the Seneca Nation of Indians; that she knows the seal of the Nation; that she affixed the seal of the Nation to this lease; that is was so affixed by order of the duly elected and authorized Tribal Council of the Nation; and by like order she attested the same as Clerk.

N. TESSIE SNOW
NOTARY PUBLIC

N. TESSIE SNOW
NOTARY PUBLIC,
STATE OF NEW YORK
QUALIFIED IN CATTARAUGUS CO.

4731664
My Commission Expires
July 31, 1988

RVSDO31787

RECORDED
JUN 12 2:31 PM 1987
CATTARAUGUS COUNTY
CLERK

State of New York S.S.
County of Cattaraugus
Recorded June 12, 1987
At 2:31 P.M. in Liber 870
Page 829 Of Deeds
And Examined.

GLORIA BILOTTA, Clerk

STATE OF NEW YORK, } ss.:
County of Cattaraugus,

On this ____ day of _____ one thousand eight hundred and _____ before me personally came _____ President of the Seneca Nation of Indians, and _____ each known to me to be the individuals described in and who executed the foregoing lease, and acknowledged that they executed the same.

_____

Received _____ *dollars rental for the year ending February* _____ *1881. Dated February* _____ *1880.*

_____

Treasurer Seneca Nation of Indians.

RENEWAL LEASE

Act of Congress Approved Feb. 10, 1875.

THE SENECA NATION OF INDIANS

TO

_____

Cattaraugus County
Clerk's Office. *ss.*

Recorded on the ____ day
of _____, 18____ at ____
O'clock ____ in Liber ____
at page ____ and Examined

APPENDIX G(6)

Proposed 40/40 Lease Offered to Plaintiffs, September 4, 1990

(SEAL) THE SENECA NATION OF INDIANS

1490 Rt. 438
IRVING, NEW YORK 14081
Phone (716) 532-4900
Phone (716) 532-4907
Fax #(716) 532-9132

P.O. Box 231
SALAMANCA, NEW YORK 14779
Phone (716) 945-1790
Fax #(716) 945-3917

PRESIDENT - *Dennis M. Lay, P. O. Box 26, Mile Block Road, Lawtons, N. Y. 14091*
CLERK - *Barbara Hemlock, RR #1 Box 270, Lawtons, N. Y. 14091*
TREASURER - *Cheryl A. Ray, P. O. Box 68, Steamburg, N. Y. 14783*

September 4, 1990

Dear Lessee,

You have probably heard that the Seneca Nation of Indians and the City of Salamanca have entered into an Agreement to settle the longstanding controversy about lease renewals of property the Nation owns in the City. Section II.B.1. of this Agreement provides that new leases shall be tendered to any person holding a lease with the Seneca Nation which either (1) expires on February 19, 1991, or (2) is among the leases listed in Document 1 of the Technical Documents to the Agreement. (Document 1 mostly lists fifty year leases which the Nation concluded in the 1970's.) The City has informed the Nation that you presently claim an interest in a lease which is within one of these two categories.

The Nation offers you the new lease enclosed with this letter, conditioned on your showing you hold a lease covered in one of the two categories described above. If a

single parcel on which your home or business is located is held under more than one former lease, these former leases will be consolidated into a single lease.

The terms of the new lease have been agreed to between the Nation and the City of Salamanca. They will not be altered.

To prove that you hold a lease in one of the covered categories you must present for review by the Nation documents which show that you are the present holder of such a lease (such as a title opinion or conveyance to you in a chain of title). The Nation is requiring that this same information be provided for each new lease to insure that each lessee now holding a former lease receives a new lease for property subject to his or her former lease. This is for the protection of both the lessee and the Nation.

The new leases are part of a comprehensive settlement of the lease controversy, which will require approval and action by both Congress and the State of New York, as described more fully in the Agreement. Accordingly, *the tender of the new lease enclosed with this letter is made expressly subject to the terms of the Agreement,* which provides that the new leases shall not be binding on the Nation until the steps set forth in Section VI.D of the Agreement have been accomplished.

The Nation and the City are taking several measures to assist lessees in the process of securing a new lease. The City is establishing an information telephone line through which it will handle questions about the leasing procedure. The line will operate from September 10 through September 29, 1990. The hours will be 3 p.m. to 5 p.m. Monday to Friday and Saturday from 9 a.m. to 12 noon. The number is 716-945-4164.

APPENDIX G(5)

12 Year Lease Exemplar (pre-1892)

RENEWAL LEASE. Cattaraugus Republican Steam Printing House, Salamanca, N.Y.

This Agreement, made between the SENECA NATION OF INDIANS of the State of New York, party of the first part, and _____, party of the second part,

Witnesseth, Whereas the party of the first part has been authorized to lease and renew leases of land situate within certain villages upon the Allegany Reservation, by an Act of Congress, entitled "An Act to Authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany Reservation, and to confirm existing leases," approved February 19, 1875.

And the party of the second part having applied for the renewal of a _____ lease heretofore executed by _____ to _____ and dated the ____ day of _____, and being such a lease as is provided for in the third section of said Act of Congress, and which application forms a part of this contract.

And the party of the first part having, by a resolution of its councilors, adopted in council held at _____ on the ____ day of _____ authorized the renewal of said _____ lease for the period of _____ years, and upon the payment of an annual rental of _____ Dollars,

Now therefore, the party of the first part, pursuant to the authority of said Act of Congress, hereby renews the said lease to the party of the second part, of

All that tract of land situate on the Allegany Reservation, in the County of Cattaraugus, in the village of _____ and bounded as follows:

* * *

for a term of _____ years, which term will expire on the _____ day of _____, 18____ for the annual rental of _____ dollars, to be paid annually in advance to the Treasurer of the Seneca Nation of Indians.

In Consideration of the foregoing, the party of the second part covenants and agrees to pay to the party of the first part the said annual rental at the times and manner above stated. Also to quit and deliver up to the party of the first part said land and premises at the expiration of said term, unless he shall procure this lease to be renewed in the manner provided by said Act of Congress.

It is mutually agreed that in case the title or possession of the party of the second part to said land shall fail, there shall be no liability on the part of the party of the first part on account thereof.

And it is further agreed that if the rent, or any part thereof, hereby provided for shall not be paid as herein provided, that the party of the first part may re-enter the said premises, or resort to any lawful remedy.

In Witness Whereof, the parties to this contract have hereunto set their hands and seals, and the seal of the said Nation, this ____ day of _____, 18____.

_____

(ILLEGIBLE)
President, Seneca Nation of Indians.

The City will also hold meetings with individual lessees in order to review their lease documents and assist in resolving individual questions and problems. The consultations with the City will be held from October 1 through November 16, 1990 at the City building at 225 Wildwood Avenue, Salamanca. The hours will be 11 a.m. to 3 p.m. and 4 p.m. to 8 p.m. Monday through Friday, excluding holidays, and Saturday from 9 a.m. to 12 noon. Lessees are encouraged to bring all documents they have that pertain to their leases, including if available, their lease(s), most recent deed(s), and abstract of title and other title documents.

The City will then transmit the information provided by each individual lessee to the Nation so that the Nation may review this information and prepare to execute the new lease(s). The Nation will then contact each lessee to schedule a date and time for execution of the new lease.

Some lessees do not live within reasonable driving distance from Salmanca. These individuals may send their documents to the City Assessor, City of Salamanca, 225 Wildwood Avenue, Salamanca, New York 14779.

If you have any questions, please contact the information line described above.

Sincerely,

/s/DENNIS M. LAY
Dennis M. Lay, President
THE SENECA NATION
OF INDIANS

LEASE NO.: _____ ACCOUNT NO. _____
FORMER LEASE NO(S). _ PROPERTY
ADDRESS/LOCATION: ___
_____
_____
_____

THIS LEASE, made and entered into between the Seneca Nation of Indians, a sovereign nation, party of the first part, hereinafter designated as the Lessor, and _____, party of the second part, hereinafter designated as the Lessee,

WITNESSETH:

1. DESCRIPTION OF PROPERTY. For and in consideration of the payment of the rental hereinafter specified and the performance and fulfillment of the terms and conditions herein by the Lessee, Lessor hereby leases to the Lessee the property situated on the Allegany Reservation as particularly described below ("lease premises" or "leased property"), excepting therefrom all timber, and all oil, gas and other minerals, including sand and gravel. The execution of this Lease, the surrender of the former Lease pursuant to attachment A hereof, and the exercise of the option to renew this Lease, all as provided for under Sections 1, 2, and 3 of this Lease, shall be subject to the full reservation of all legal rights by both parties contained in Section 28 *infra*. The Lease premises are described as follows: All that tract or parcel of land, situated in the City of Salamanca, County of Cattaraugus and State of New York, bounded and described as follows:

(ATTACH ADDITIONAL PAGE IF NECESSARY)

The description of the Lease premises provided above is based upon the best efforts of Lessor and Lessee to Lease the lands covered by the former Lease No(s). _____, and it is the intent of the parties to Lease those lands and only those lands. To effectuate that intent, Lessor and Lessee agree that: (1) the above description is subject to modification (i) for mutual mistake of fact by written agreement executed by Lessor and Lessee; (ii) to reflect alterations provided for in Section 11, or (iii) pursuant to a survey agreed upon in writing by both parties and by the City of Salamanca, such survey to be performed by persons expert in the field of surveying; and (2) Lessor shall not be liable in any way whatsoever to Lessee in the event that another Lessee shall claim an interest in all or any portion of the Lease premises.

2. TERM. The initial term of this Lease shall be for forty (40) years, commencing on the 20th day of February, 1991, and ending on the 19th day of February, 2031, provided that Lessee understands and agrees that this Lease shall not be binding on the Nation until the steps set forth in Section VI.D. of the Agreement between the Seneca Nation of Indians and City of Salamanca, executed by the City on July 12, 1990, and by the Nation on July 13, 1990, ("Agreement") have been accomplished, and shall remain effective subject to the terms of such Section, and provided further that ineffectiveness of this Lease pursuant to such Section, should that occur, shall not be an event of default under Section 22 *infra*.

3. OPTION TO RENEW. (a) Lessor grants to Lessee, subject to the conditions set forth below, the right and option to renew this Lease for one period of forty (40) years, beginning on the 20th day of February,

2031, and expiring on the 19th day of February, 2071, at a rental determined as provided below, and otherwise subject to and on all of the terms and conditions contained herein. This option must be exercised by the giving to Lessor, between February 20 and November 21, 2030, a written notice of the exercise thereof by Lessee, but Lessee shall in no event be entitled to renew the term hereof if Lessee is in default in the performance of any obligation hereunder as of the date of the expiration of the initial term hereof. Lessor shall give Lessee and the City written notice of all defaults on or before November 20, 2030, and either Lessee or the City may cure the defaults on or before February 19, 2031, and thereby preserve the right to renew, provided, however, that if on February 19, 2031, Lessee has given Lessor notice that a default exists which could not be cured by the date of the expiration of the initial term, but which Lessee has made every good faith effort to cure before that date, Lessor and Lessee shall mutually agree on an extension of not more than 180 days to complete Lessee's cure of the default.

(b) Upon written request of Lessee, the City, or the mortgagee at any time between February 20 and November 21, 2030, Lessor shall within seven (7) days of receiving the request advise Lessee in writing of any default by Lessee known to Lessor at that time which has not been cured, or of any investigation at that time by Lessor of any possible default by Lessee.

4. RENT.

4.1 *Basic Rent.* (a) In consideration of the leasing of the above-described premises, Lessee covenants and agrees to make an advance annual rental payment on or before February 20 of each year that this Lease or any renewal thereof pursuant to Section 3 of this Lease is in

effect. The annual rental payment for the lease premises shall be eight percent (8%) of the land value of property leased for residential purposes and ten percent (10%) of land value of property leased for non-residential purposes. "Residential" means one, two, three, and four family residences, except cooperatives and condominiums. Non-residential means all types of property except that which is residential. Land value means the value of the land, exclusive of improvements, provided that the use of the term "land value" shall not in any way affect the Nation's claim that it owns improvements on the leased lands, which claim is preserved under Section 28 *infra*. The land value of the leased property shall be as determined by the procedures provide for under Section 4.1(b) and (c), provided that until the reappraisal to be completed by the end of the fifth year of the initial forty year term of this Lease has been completed as provided for under Section 4.1(b), the land value for the leased property shall be determined by the Equilization Rate applied to the assessed land value for each parcel.

(b) Lessee's annual rental payment shall be adjusted annually by the same percentage at which the full value of property in the City changes, as shown by the Equalization Rate. If the Equalization Rate (or a successor or substitute index similarly adjusted) is not available, Lessee agrees that the Lessor and the City of Salamanca will agree upon the use of a different methodology for determining the rate of change in property values in the City which shall thereafter be used to make the annual adjustment in Lessee's annual rental payment. Lessor and Lessee further agree that the property in the City will be the subject of an objective reappraisal to determine the land value of the leased property, to be completed by the end of the fifth year of

the initial forty year term of this Lease. The reappraisal of the land value of the leased property shall be conducted by an appraiser retained specifically for this purpose, who is acceptable to both the Lessor and the City of Salamanca, shall be conducted on terms acceptable to both the Lessor and the City, and shall be without cost to the Lessee. The land value as determined by the objective reappraisal conducted under this Section shall become the land value for the purpose of calculating the Lessee's annual rental payment, and shall thereafter be subject to annual adjustment pursuant to this Subsection.

(c) Lessee further understands and agrees that Lessor may, at its option at any other five year anniversay date of this Lease (the first such date being February 20, 2001). (1) initiate, upon satisfactory demonstration to the Seneca Nation—City of Salamanca Joint Leasing Commission ("Joint Leasing Commission") that the values used are not representative of market values, an objection reappraisal to determine the land value of the leased property, to be conducted in accordance with subsection (b) above, or (2) test the methodology used to determine the Equalization Rate through the use of a random sample selection of parcels in accordance with the procedures set forth by the State Board of Equalization and Assessment for such testing. The land value as determined by objective reappraisals conducted under this subsection shall become the land values for purposes of calculating the Lessee's annual rental payment, and shall thereafter be subject to annual adjustment pursuant to Subsection (b) of this Section. The Equalization Rate as determined by the testing procedures set forth under this subsection shall become the Equalization Rate used for that year for purposes of

other Lessees, owners, or users of adjacent property or property in the vicinity, or to the acts of third parties or other strangers.

7. DESTRUCTION OF IMPROVEMENTS. If any improvements on the leased property are destroyed or partly destroyed by fire or other causes during the Lease term, Lesee at Lessee's own expense, shall either clear the remaining structure from the site or replace (renovate) the structure within the succeeding twelve (12) months following the incident of destruction.

8. MAINTENANCE AND REPAIRS. Lessee, at Lessee's own expense, shall keep the leased property and the adjoining curbs and ways, if any, in good and clean order and condition and, subject to the provisions of Section 7 and 21.3, will promptly make all necessary repairs, replacements and renewals thereof, ordinary or extraordinary foreseen or unforeseen. All repairs, replacements, renovations and renewals shall be equal in quality and class to the original work. Lessor shall not be obligated to make any repairs, replacements, renovations, or renewals of any kind.

9. WASTE AND NUISANCE, ILLEGAL USE. Lessee shall not do or permit any act or thing on the leased property which is contrary to law or any legal requirement, which constitutes a public or private nuisance or waste, or which, excepting normal wear and tear, would cause a reduction in property value or would impair the usefulness of the leased property.

10. HARVESTING. Lessee shall not harvest from the leased property any natural resources, including without limitation timber, natural plants, topsoil, sand, gravel, rock, oil and other petroleum products, natural gas and other minerals. Permitted uses include

landscaping, gardening for home use, the use of the soil to grow agricultural crops, flowers, bushes and Christmas trees planted by Lessee, pasture cattle, and grow lawns, and the removal of weeds.

11. SUBDIVIDING. Lessee shall not subdivide the leased property or any part thereof without the express written approval of Lessor, provided that Lessee may without consent of Lessor assign to an adjacent Lessee the Lessee's interest in that portion of the lease premises as originally described in Section 1 which is contained within an area not to exceed ten (10) feet from any boundary line of the lease premises, with the consent of said adjacent Lessee, provided that the Lessee shall provide Lessor with notice of any such assignment within (15) days of the making of such assignment, and the description of the lease premises shall be altered in accordance with Section 1 to reflect such an assignment. Written request for subdivision approval must be submitted to Lessor at least 120 days prior to the proposed subdivision date, and Lessor's response shall be provided within 90 days of receipt of said request.

12. ASSEMBLING PARCELS. Lessee shall not assemble the leased property or any part thereof with any adjoining or contiguous parcel(s) or land for the purpose of creating a change in use and/or a change in the general characteristics of the neighborhood without approval of Lessor and all appropriate regulatory agencies now or hereafter affecting or governing property use within the City of Salamanca. Written request for Lessor's approval must be submitted to Lessor at least ninety (90) day prior to the desired date of the proposed change in use which impacts upon the leased property.

13. LIABILITY FOR CONDITION OF PROPERTY. Lessee acknowledges that he has examined the leased property prior to the making of this Lease, and knows the condition thereof, and that no representations as to the condition or state of repairs thereof have been made by Lessor or his agents which are not herein expressed and Lessee hereby accepts the leased property in its present condition at the date of the execution of this Lease. Lessor shall not be liable for any patent or latent defect in the leased property. As for damage which may in the future affect the condition of the leased property or persons thereon, Lessee agrees to hold Lessor harmless for acts of God or nature and act of third parties, including, without limitation, acts of theft, burglary and vandalism and all acts of other Lessees on adjacent or nearby property.

Nothing herein shall preclude Lessee from bringing any action necessary to obtain damages from either Lessees of adjacent or nearby property, or other third parties, if damages are incurred by Lessee as a result of their actions.

14. INDEMNIFICATION BY LESSEE. Lessee will protect, indemnify and save harmless Lessor from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including without limitation, attorneys' fees and expenses) imposed upon or incurred by or asserted against Lessor by reason of (a) ownership of the leased property or any interest therein; or receipt of rent or other sums therefrom, where such claim arises out of an act or omission of Lessee, (b) any accident, injury to or death of persons or loss of or damages to property occurring on or about the demised premises or any part thereof or the adjoining sidewalks; (c) any failure on the part of the Lessee to perform or

comply with the terms of this Lease; or (d) performance of any labor or services or the furnishing of any materials or other property in respect of the leased property or any part thereof. In case any action, suit or proceeding is brought against Lessor by reason of such occurrence, Lessee, upon Lessor's request, will, at Lessee's expense, resist and defend such action, suit or proceeding, or cause the same to be resisted and defended by counsel designated by Lessee and approved by Lessor, which approval will not be unreasonably withheld, and Lessor agrees that it will not waive its sovereign immunity, to any claim brought against it that is subject to indemnification under this Section. Such obligations of Lessee under this Section as shall have accrued at the time of any termination of this Lease shall survive any such termination.

15. HAZARDOUS OR TOXIC WASTE. Lessee represents to Lessor that prior to the execution of this Lease, Lessee disclosed to Lessor any information Lessee had regarding the existence of any hazardous or toxic waste areas within the leased property and Lessee further agrees to promptly inform Lessor of any such hazardous or toxic waste areas of which it may subsequently learn. Lessee agrees to indemnify, defend and save harmless Lessor from and against any and all claims, fines and actions arising out of the existence of any such hazardous or toxic waste areas or the obligations which may now or hereafter arise to remove therefrom, or otherwise neutralize or contain any such toxic or hazardous substances, unless such condition shall be caused solely by Lessor. Lessor agrees that it will not waive its sovereign immunity to any claim brought against it that is subject to indemnification under this Section. Nothing herein shall preclude Lessee

from bringing any action necessary to obtain damages from either Lessees of adjacent or nearby property, or other third parties, if the actions of such persons have caused or contributed to hazardous or toxic waste on the leased premises.

16. ARBITRATION. Whenever any issue shall arise concerning any party's compliance with or obligations under any of the terms of this Lease, such issue shall be settled and determined by the Seneca Nation—City of Salamanca Joint Leasing Commission ("Commission"), provided that the legal positions reserved under Section 28 *infra* shall not be subject to presentation to or resolution by the Commission. Lessor, Lessee, and the City of Salamanca shall all have the right to initiate arbitration by filing a complaint with the Commission and, subject to their right to appeal, Lessor, Lessee, and the City of Salamanca agree to be bound by the decision of the Commission.

17. NOTICE OF RENT DUE.

The parties agree that the City of Salamanca under procedures approved by the Seneca Nation—City of Salamanca Joint Leasing Commission shall mail to Lessee or to the person or persons succeeding to his interest as shown by the records of the Clerk of the Seneca Nation, between January 1 and January 31 of each year, a notice setting forth the amount of the rent to become due on this Lease on February 20, to be tendered to the City by February 15, provided that the failure to mail such notice shall not in any respect relieve Lessee or his successors or the City of the obligation to pay rent in accordance with the terms of this Lease.

18. LESSOR'S ACCESS TO PROPERTY. The parties agree that Lessor may at any time during the term of this Lease enter upon the Lease premises (but

not improvements) for the purpose of: (i) investigating compliance with the terms of this Lease, provided that reasonable cause to investigate compliance exists for such entry if done more frequently than annually; (ii) for the removal of merchantable timber, and (iii) for the exploration, development and removal of gas, oil and other minerals, including sand and gravel; *provided*, that Lessee shall be fully compensated for all damages resulting from such entrances; that Lessor shall provide Lessee with reasonable prior notice of its intent to enter; that the entry shall be during reasonable business hours and shall be made by officials or employees of Lessor and *provided further* that no shade trees or ornamental trees shall be removed by Lessor from any improved premises and no timber shall be considered merchantable unless suitable for sawing into lumber.

19. TRANSFER OF LESSEE'S INTEREST.

19.1 *Lessee's Right to Sublet or Assign.* Lessee shall have the right at any time to sublet the leased property or to assign this Lease; *provided* that (1) Lessee shall provide Lessor with notice of the subletting or assignment at least thirty (30) days prior to the effective date of said subletting or assignment; (2) the subletting or assignment shall be by an instrument in writing bearing the endorsement of the sublessee or assignee expressly assuming all the obligations of Lessee under this Lease; and (3) copies of the instrument required by part (2) of this Subsection shall be filed by Lessee with the Lessor, the City of Salamanca, the Seneca Nation—City of Salamanca Joint Leasing Commission, and the Cattaraugus County Clerk's Office.

Where the subletting is for a term of three years or less, the requirements of Section 19.1(1)-(3) shall not apply.

determining the annual adjustment in the Lessee's annual rental payment as provided for under this Section.

4.2 *City of Salamanca payment of rent.* Lessee understands that the City of Salamanca has agreed to make full payment of all amounts described in Section 4.1 to Lessor. Nothing in this Section shall relieve Lessee of the obligation to make the rental payments to Lessor required in Section 4.1 as adjusted from time to time if the City shall not honor its agreement to make such full payment.

4.3 *Late payments.*

(a) Lessee also shall pay, from time to time as provided in this Lease or on demand of Lessor, as "additional rent": (1) interest at the rate of 2.0 percent per month on all overdue installments of basic rent, such interest to accrue from the due date thereof until payment; (2) a late charge of ten percent (10%) of the annual rental payment for each past due payment to cover the extra expense involved in handling such delinquency; (3) reasonable attorneys' fees and expenses occasioned by any default by Lessee under this Lease.

(b) If the City of Salamanca discharges its obligation to tender full payment to Lessor for Lessee's share of the annual payment of basic rent on or before February 20 of each year this Lease is in effect, then any interest payments and the late charges owed by Lessee under Subsection (a) because of a default in payment of basic rent shall be paid to the City of Salamanca. If the City fails to discharge its obligation to Lessee to tender full payment, then Lessee shall pay such interest payments and late charges to Lessor.

(c) In the event of any failure on the part of Lessee to pay any additional rent owed to Lessor, Lessor shall have all the rights, powers and remedies provided for in this Lease or at law or in equity or otherwise as in the case of non-payment of basic rent.

5. NO COUNTERCLAIM, ABATEMENT, ETC. Except as otherwise specifically provided in Section 17, rent payable hereunder shall be paid without notice, demand, counterclaim, setoff, deduction, or defense and without abatement, suspension, deferment, diminution or reduction. The intention of the parties (and this Lease shall be interpreted in accordance with this intent) is that the rent shall be absolutely net to Lessor so that this Lease shall yield to Lessor the full amount of the installments of rent (as adjusted) throughout the term of this Lease, and that all costs, expenses, impositions and obligations of every kind and nature whatever relating to the lease premises shall be paid by Lessee. Except as expressly provided herein, Lessee waives all rights now or hereafter conferred by statute or otherwise, without the consent of the Lessor, to quit, terminate or surrender this Lease or the lease premises or any part thereof, or to any abatement, suspension, deferment, diminution, or reduction of basic rent, additional rent, or any other sum payable to Lessor hereunder.

6. COVENANT OF QUIET ENJOYMENT. Except as otherwise specifically provided in Section 1, Lessor covenants that Lessee shall have the quiet and peaceable possession and enjoyment of the lease premises as regards Lessor and anyone acting on Lessor's behalf or under Lessor's direction. This covenant shall extend only to Lessor and shall not extend, however, to the acts of

19.2 *Lessee's Liability After Subletting or Assigning.* Any sublease entered into by Lessee shall not relieve Lessee of any of its obligations, express or implied, under this Lease, including without limitation its obligation to pay rent, and Lessee shall remain liable for full payment of the rent and other required payments according to the terms of this Lease. Any assignment of the lease premises shall relieve Lessee of all liability for rent after all the filings required by Section 19.1 have been completed.

19.3 *Transfer Upon Death of Lessee.* This Lease shall pass by will and by the laws of the State of New York; *provided however,* that the rights of any Indian Lessee in this Lease shall descend as provided by the laws of the Seneca Nation. When the Lease or any part of it is transferred by will or by inheritance without a will, an instrument in writing showing the succession and expressly assuming all obligations of the Lessee shall be filed by the person succeeding to Lessee's interest with the Lessor, the City of Salamanca, the Seneca Nation—City of Salamanca Joint Leasing Commission, and the Clerk of Cattaraugus County. Where the City of Salamanca receives notice of a transfer due to the death of the Lessee, it shall notify the successor of the obligation to file an instrument under this Section, and shall send a copy of such notice to the Lessor and the Joint Leasing Commission. All such instruments shall be filed within one year of the Lessee's death. The Joint Leasing Commission shall develop any procedures for transferring this Lease or, at the Commission's option, other documentation of transfer of the Lessee's interest upon Lessee's death.

20. ENCUMBRANCES.

20.1 *Pre-existing Encumbrances.* Lessee agrees and accepts that Lessee's estate as hereby created shall be subject to such legal liens and encumbrances which heretofore attached to or affected the prior Lease of the property described in Section 1 (which prior Lease is No(s). _____), the same order of priority in which they attached to or affected the prior Lease, except that nothing herein contained shall be deemed to re-establish or recreate any lien or encumbrance which has been legally or validly terminated.

20.2 *Liens.* Lessee shall keep the fee estate of the leased premises free and clear from all mechanics' and materialmen's and other liens for work or labor done, services performed, materials, appliances, teams or power contributed, used or furnished or to be used in or about the lease premises for or in connection with any operations of Lessee, or any alterations, improvements, repairs, or additions which Lessee may make or permit or cause to be made, or any work or construction by, for, or permitted by Lessee on or about the leased property.

20.3 Leasehold Mortgage. Lessee shall have the right without the Lessor's consent to encumber Lessee's interest in this Lease under a mortgage and to assign this Lease as collateral security thereof; *provided however,* that at the time of making such mortgage there is no existing and unremedied default on the part of Lessee under any of the agreements, terms, covenants and conditions of this Lease; and provided that the Lessor and the Joint Leasing Commission shall certify to the mortgagee whether: (1) there is any known default of the Lease; (2) Lessee has received notice of a default; and (3) there is any pending investigation of a default by

either Lessor or the Joint Leasing Commission within fifteen (15) days of a written request by the mortgagee unless Lessor shall request a ten (10) day extension of time to make such certification; *provided further,* that if no certification is made by Lessor in accordance with this Section, no further certification need be made and no existing default or pending investigation shall be deemed to exist at that time; and *provided further,* that no mortgage shall extend to or affect the reversionary interest and estate of Lessor in the lease premises, or in any manner attach to or affect the lease premises from and after any expiration or termination of this Lease and of the term hereof; and *provided further,* that no mortgage shall be binding upon Lessor to constrain in any way the enforcement of Lessor's rights and remedies unless and until a fully executed counterpart thereof, in recordable form, or a duly certified copy of any such recorded mortgage shall be delivered to Lessor and Lessor shall not be bound by or be deemed to have any notice of any mortgage unless and until the same shall have been delivered as aforesaid, notwithsanding any other form of notice, actual or constructive, which may occur or be claimed to have occurred. A copy of any executed mortgage shall also be provided to the Lessor and the Joint Leasing Commission. Mortgagee on behalf of Lessee-mortgagee shall have the right and option to renew this Lease in accordance with Section 3 hereof.

21. RIGHT TO PERFORM LESSEE'S COVENANTS.

21.1 *Notice.* Lessor shall give to the City of Salamanca and to the mortgagees of any mortgage which conforms to the provisions of Section 20.3, a copy of any notice or other communication given by Lessor to Lessee hereunder at the same time that the notice is given to

Lessee. Lessor shall not exercise any right, power or remedy with respect to any default hereunder and no notice to Lessee of any such default and no termination of this Lease in connection therewith shall be effective, unless Lessor shall have given to the mortgagee and the City of Salamanca written notice or a copy of its notice to Lessee of such default or any such termination, as the case may be.

21.2 *Forbearance by Lessor of Remedies Upon Default.* Lessor shall not exercise any right, power or remedy with respect to any default or breach as set forth in Section 22 until 30 days after the date on which the Lessor gives to the mortgagee and the City of Salamanca written notice of such default or a copy of its notice to Lessee of such default. Subject to Section 22(a), Lessor will not exercise any right, power or remedy with respect to any default hereunder if (a) the mortgagee or the City of Salamanca within such thirty (30) day period shall give to Lessor written notice that the mortgagee or the City intends to undertake the correction of such default or to cause the same to be corrected, and (b) the mortgagee or the City of Salamanca shall thereafter prosecute diligently the correction of such default, whether by exercise on behalf of Lessee of its obligations hereunder, entry on the leased property, foreclosure, or otherwise. Unless the Lessor and the City of Salamanca or the mortgagee, as the case may be, agree in writing to a different period, the time to cure the default shall be sixty days from the date of the notice referred to in Subsection 21.2(a), provided that as set forth in Section 22(a), where the Lessee fails to tender the rent to the Lessor when the rent is due and payable, the time to cure shall be thirty days from the written notice of default, and provided further that where the default consists of an action that can be ceased immediately

(2) Lessor shall apply the rent received from reletting the premises (i) to reduce the indebtedness of Lessee to Lessor under the Lease, not including indebtedness for rent; (ii) to expenses of the reletting and alterations, replacements, renovations, and repairs made; (iii) to rent due under this Lease, or (iv) to payment of future rent under this Lease as it becomes due.

(3) If the Lessee pays all rent and other charges due, with any set-off for rent received by Lessor from reletting the premises, the Lessee shall be permitted to reoccupy the premises and termination proceedings, if commenced, shall be dismissed.

If the new Lessee does not pay a rent installment promptly to Lessor, and the rent installment has been credited in advance of payment to the indebtedness of Lessee other than rent, or if rentals of the new Lessee have been otherwise applied by Lessor as provided for herein and during any rent installation period are less than the rent payable for the corresponding installment period under this Lease, Lessee shall pay Lessor the deficiency, separately for each rent installment deficiency period, and before the end of that period. Lessor may at any time after a reletting terminate the Lease for the breach on which Lessor had based the re-entry and subsequent relet of the property.

(e) Should Lessor elect to re-enter and repossess the demised property, Lessor may do so by force, summary proceedings, ejectment or otherwise and may remove Lessee and all other persons and property therefrom. Lessor shall be under no liability for or by reason of any such entry, repossession or removal.

24. FURTHER REMEDIES. In addition to the right to terminate this Lease and/or repossess the property, Lessor, in the event of default by Lessee, shall

have the right to collect from Lessee all rent and other charges which shall have accrued, shall have the right to sue for other damages or injunctive relief, as appropriate, and, further, shall have the right to exercise all other rights, powers, and remedies now or hereafter existing at law or in equity or by statute or otherwise. Lessor may exercise any or all of these rights even if Lessor elects not to terminate the Lease and/or repossess the lease premises.

25. REMEDIES CUMULATIVE. Each right, power, and remedy of Lessor provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Lessor of any one or more of the rights, powers or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Lessor of any or all such other rights, powers or remedies to the fullest extent permitted by law.

26. NO WAIVER BY LESSOR. No failure by Lessor to insist upon the strict performance of any term hereof or to exercise any right, power or remedy consequent upon a breach thereof, and no acceptance of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach or of any such term. No waiver of any breach shall affect or alter this Lease, which shall continue in full force and effect, or the rights of Lessor with respect to any other then existing or subsequent breach. The right to cure defaults as set forth in Sections 21 and 22 shall not be affected by this Section.

upon receipt of notice of the default, the time to cure shall be seven days from receipt of the notice, and provided further, that where the default creates a significant danger to the health or safety of the surrounding community, the actions necessary to cure the default shall commence within forty eight hours of receipt of the notice by the City or the mortgagee, as the case may be, and the time to cure shall be the shortest feasible period, not to exceed ninety days unless otherwise agreed in writing by the Lessor and the City of Salamanca or the mortgagee.

21.3 *Performance on Behalf of Lessee.* Lessor, the mortgagee or the City of Salamanca may make any payment or perform any action required hereunder to be made or performed by Lessee with the same effect as if made or performed by Lessee. The City of Salamanca or the mortgagee, as the case may be, shall provide written notice to Lessor of its intent to perform the Lessee's obligations. No entry by Lessor, the mortgagee or the City of Salamanca upon the lease premises for such purpose shall constitute or be deemed to be an eviction of Lessee. Such payment, performance, or action shall not waive or release Lessee from any obligation or default hereunder except that obligation or default which shall have been fully performed or corrected by such payment or performance by the mortgagee or the City of Salamanca. Lessee shall be liable for and shall pay to Lessor all sums so paid by Lessor and all costs and expenses incurred by Lessor in connection with the performance of any such act, and such sums shall constitute additional rent payable by Lessee hereunder. Where the City of Salamanca performs Lessee's obligations the Lessee shall be liable to the City for such sums, costs, and expenses.

22. DEFAULT OR BREACH. Each of the following events shall constitute a default or breach of this Lease by Lessee:

(a) If Lessee shall fail to tender to the City of Salamanca the annual payment of basic rent when the payment is due and payable and if the City of Salamanca shall fail to forward Lessee's payment to the Nation when the payment is due and payable notwithstanding its obligation to insure Lessee's payment and if neither Lessee nor the City of Salamanca shall make the payment within thirty (30) days after written notice thereof by Lessor to Lessee and the City of Salamanca.

(b) If Lessee shall fail to perform or comply with any other term of this Lease and such failure shall continue for more than thirty (30) days after written notice thereof from Lessor to Lessee and Lessee shall not within such period commence with due diligence and dispatch and curing of such default or if Lessee shall, within such period, commence with due diligence and dispatch to cure such default and shall thereafter fail or neglect to prosecute and complete with due diligence and dispatch the curing of such default. Unless the Lessee and the Lessor agree in writing to a different period, the time to cure the default shall be ninety days from the date of the written notice to the Lessee of the default, provided that where the default consists of an action that can be ceased immediately upon receipt of notice of the default, the time to cure shall be forty-eight hours from receipt of the notice, and provided further, that where the default creates a significant danger to the health or safety of the surrounding community, the actions necessary to cure the default shall commence within forty-eight hours of receipt of the notice by the

Lessee, and the time to cure shall be the shortest feasible period, not to exceed ninety days unless otherwise agreed in writing by the Lessor and the Lessee.

(c) If Lessee shall abandon the lease premises.

(d) If Lessee shall use or permit the use of the leased premises for any unlawful purpose of an ongoing or continuous nature and/or which creates dangerous, hazardous or otherwise highly undesirable conditions in the surrounding community. If the Lease premises had been sublet and the original Lessee did not know or have reason to know of the unlawful use, the Lessee may cure the default as provided in Section 22(b) by ending the unlawful use and reoccupying the premises or subletting to a suitable subtenant.

23. LESSOR'S REMEDIES ON DEFAULT. In the event of any default hereunder, in addition to the remedies as set forth in Section 22, the rights of Lessor shall be as follows:

(a) Lessor shall have the right to cancel and terminate this Lease, as well as all of the right, title, and interest of Lessee hereunder, by giving to Lessee not less than 30 days' notice of the cancellation and termination. Such notice shall follow expiration of the thirty day notice of default and any time to cure under Section 21.2 and 22 (a) and (b). On expiration of the time fixed in the notice, this Lease and the right, title, and interest of Lessee hereunder, shall terminate except as to Lessee's liability.

(b) Lessor may elect, but shall not be obligated, to make any payment required of Lessee herein or comply with any agreement, term, or condition required hereby to be performed by Lessee, and Lessor shall have the right to enter the leased property for the purpose of

correcting or remedying any such default and to remain until the default has been corrected or remedied, but any expenditure for the correction by Lessor shall not be deemed to waive or release the default of Lessee or the right of Lessor to take any action as may be otherwise permissible hereunder in the case of any default.

(c) Lessor may re-enter the property immediately and remove the Lessee and any of the property and personnel of Lessee, and store the property in a public warehouse or at a place selected by Lessor, at the expense of Lessee. After re-entry Lessor may terminate the Lease on giving 30 days' written notice of termination to Lessee. Without the notice, re-entry will not terminate the Lease. On termination Lessor may recover from Lessee all damages proximately resulting from the breach, including the cost of recovering the property, and the worth of the balance of this Lease over the reasonable rental value of the premises for the remainder of the Lease term, which sum shall be immediately due Lessor from Lessee.

(d) After re-entry, Lessor may relet the property or any part thereof for any term without terminating the Lease, at the rent and on the terms as Lessor may choose. Lessor may make alterations and repairs to the property. The duties and liabilities of the parties if the property is relet as provided herein shall be as follows:

(1) In addition to Lessee's liability to Lessor for breach of the Lease, Lessee shall be liable for all expenses of the reletting, for the alterations and repairs made, and for the difference between the rent received by Lessor under the new Lease agreement and the rent installments that are due for the same period under this Lease.

27. LESSEE'S WAIVER OF STATUTORY RIGHTS. In the event of any termination of this Lease or repossession of the lease premises pursuant to Section 23, Lessee, so far as permitted by law, waives any right of redemption, re-entry or repossession and the benefits of any law now or hereafter in force exempting property from liability for rent or for debt. In the event Lessee should be legally discharged in bankruptcy from further obligations under the Lease, the City of Salamanca shall thereafter make all payments required hereunder to Lessor as required by Article II. B. of its Agreement with the Lessor.

28. LEGAL POSITIONS. The parties agree that this Lease, including its execution and implementation (1) shall not foreclose either party from making any contention with respect to the interpretation of the 1875 and 1890 Acts or any claim of being or not being a Lessee under these Acts; and (2) shall not be deemed an admission by either party with respect to the interpretation of these Acts, now or in the future, provided, however, that questions of the interpretation of the 1875 or 1890 Acts shall not be presented to the Joint Leasing Commission or otherwise subject to arbitration.

29. PARTIES BOUND. The covenants and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all of the parties hereto; and, except as otherwise provided, all of the parties hereto shall be jointly and severally liable hereunder.

30. TIME OF THE ESSENCE. Time is of the essence of this Lease, and of each and every covenant, term, condition, and provision hereof.

31. SECTION CAPTIONS. The captions appearing after the Section number designations of this Lease are for convenience only and are not a part of this Lease and do not in any way limit or amplify the provisions of this Lease.

32. NOTICES. All notices, filings, and other communications hereunder shall be in writing and shall be deemed to have been given when delivered or mailed by first class, registered or certified mail, postage prepaid, addressed (a) if to Lessee; _____, or at such other address as Lessee shall have furnished to Lessor; (b) if to Lessor: Clerk of the Seneca Nation, P.O. Box 231, Salamanca, New York 14779, or at such other address as Lessor shall have furnished to Lessee; (c) if to a mortgagee, at such address as the mortgagee shall have furnished to Lessor and Lessee; (d) if to the City of Salamanca: 225 Wildwood Avenue, Salamanca, N.Y. 14779, Attention: City Comptroller, or at such other address as the City shall have furnished to Lessor and Lessee, or (e) if to the Seneca Nation - City of Salamanca Joint Leasing Commission, at such address as the Commission hereafter designate. Notices and filings shall be in such form as approved by the Joint Leasing Commission.

33. LEASE MODIFICATION. The terms and provisions of this Lease shall not be waived, modified, or changed without written consent of the Lessor.

IN WITNESS WHEREOF, the Lessor has caused this Lease to be executed in duplicate by its duly authorized officer, and its seal to be hereunto affixed this _____ day of _____, 19____, and the Lessee has hereunto set his hand and seal this _____ day of _____, 19____.

SENECA NATION OF INDIANS

By: _____

_____

President

LESSEE:

_____

MAILING ADDRESS:

_____

_____

_____

_____

ATTEST:

_____

Clerk, Seneca Nation of Indians

STATE OF NEW YORK }
} ss.
COUNTY OF CATTARAUGUS }

On this _____ day of _____, 19_____, before me personally appeared _____ known to me to be the individual who executed the foregoing Lease, and acknowledged the same to be _____ act and deed.

(S E A L)

_____

Notary Public

STATE OF NEW YORK }
} ss.
COUNTY OF CATTARAUGUS }

On this _____ day of _____, 19____, before me personally appeared _____ known to me known, who being by me duly sworn, did

depose and say that he is the President of the Seneca Nation of Indians, the Lessor described in and who authorized the execution of this lease; that he knows the seal of the Nation; that the seal affixed to this lease is the seal of the Nation; that it was so affixed by order of the duly elected and authorized Tribal Council of the Nation; and that by like order he signed his name to this lease as President. And on the same day and year before me personally appeared _____, to me known, who being by me duly sworn, did depose and say that she is the Clerk of the Seneca Nation of Indians; that she knows the seal of the Nation; that she affixed the seal of the Nation to this lease; that it was so affixed by order of the duly elected and authorized Tribal Council of the Nation; and by like order she attested the same as Clerk.

(S E A L)

_____

Notary Public

ATTACHMENT A

Surrender

LEASE NO. _____

Former Lease No(s). _____

_____, hereinafter designated as Lessee, hereby surrenders to the Seneca Nation of Indians, hereinafter designated as Lessor, Former Lease No(s). _____, Lessee's surrender of former Lease No(s). _____ is made expressly subject to the terms of Lease No. _____ and shall be subject to the full reservation of all legal rights by both parties contained in Section 28 of Lease No. _____.

Lessee: _____

STATE OF NEW YORK :

ss

COUNTY OF CATTARAUGUS :

On the _____ day of _____, 19____, before me personally appeared _____, known to be the individual who executed the foregoing surrender, and acknowledged the same to be _____ act and deed.

(SEAL)

_____

Notary Public

APPENDIX G(7)

Agreement Between Seneca Nation and City of Salamanca Executed July 12, 1990

AGREEMENT
Between
The Seneca Nation of Indians and
The City of Salamanca,

I. PURPOSE AND SCOPE OF AGREEMENT; HISTORICAL BACKGROUND; PARTIES

A. Purpose and Scope

This Agreement establishes a framework for cooperation and a mutually beneficial future for the Seneca Nation of Indians, Nation members, the City of Salamanca and City residents. The Agreement: (1) provides City residents with new leases of Nation land; and (2) provides the Nation with fair compensation for the use of its land and for the impacts on the Nation of the prior lease arrangement.

B. Historical Background

The Agreement is rooted in an appreciation of the heavy toll paid by the Nation in the historical development of the City of Salamanca. The parties are aware of the unique sequence of events which deprived the Nation of the use of its lands. In the mid-nineteenth century, several railroads, without Federal authorization or approval and on terms adverse to the Nation secured rights-of-way through the Allegany Reservation. The railroads were built on the Allegany Reservation under authority which the State of New York lacked but purported to grant. Subsequently, railroad employees, persons associated with the railroads, city residents and

non-Indian farmers obtained leases of Allegany Reservation lands, also without Federal authorization and, similarly, on terms adverse to the Nation. By 1875, Congress, aware of the considerable non-Indian settlement of and investment in Nation land and at the urging of the State, determined to act. By the Act of February 19, 1875 (18 Stat. 330), the United States confirmed existing leases of Allegany Reservation lands, authorized further leasing and, over Indian opposition, made the confirmed leases renewable for a twelve year period. Fifteen years later Congress dealt the Nation yet another blow. The Act of September 30, 1890 (2d Stat. 558), also enacted over Indian opposition, amended the 1875 Act by substituting a renewal term of "not exceeding ninety-nine years" for the original renewal term of twelve years. The leases were subsequently executed without federal supervision, assistance, or support. Rentals were for a fixed sum, with no escalation. Thus, the Nation has now been deprived of its lands for well over one hundred years, yet has received extremely inadequate rental payments and, in many cases, no payments at all.

The leases confirmed and authorized by these acts of Congress and upon which the City of Salamanca was founded are now due to expire on February 19, 1991. Understandably, this approaching expiration date is creating considerable anxiety and uncertainty on the part of City residents. Mindful of these justifiable concerns on the part of City residents, as well as the injustices suffered by the Nation and its members, the parties have negotiated this Agreement to compensate the Nation fairly for the use of Nation lands, to provide a measure of certainty and security to the City and City residents, and to establish a framework for future cooperation and economic advancement.

C. Parties

The following are parties to this Agreement:

1. the Seneca Nation of Indians
2. the City of Salamanca

II. NEW LEASES

A. Nation's Commitment to Provide New Leases

The Nation agrees to provide new leases to any person holding a lease with the Seneca Nation which either expires on February 19, 1991 or is among the leases listed in Document 1 of the Technical Documents. After a leased property becomes the subject of a new executed lease, the old lease shall be treated as surrendered. The tender of the new leases, the surrender of the old leases, and the exercise of the option to renew the new leases, all as provided for under this Section, shall be subject to the terms of Section VII of this Agreement.

B. Lease Terms

1. The new leases will be for a term of 40 years from February 19, 1991. The Nation shall tender the new leases to any person holding a lease with the Seneca Nation which either expires on February 19, 1991 or is among the leases listed in Document 1 of the Technical Documents within sixty days of ratification of this Agreement by the Nation and the City, provided that the new leases so tendered shall not be binding on the Nation until the steps set forth in Section VI.D. of this Agreement have been accomplished. The leases shall become binding on the same basis as the Agreement is to become

effective under Section VI. D. The option to accept the offer of a new lease shall expire on February 19, 1991 unless extended by the Nation.

2. Lessees will have the option to renew the new leases for a period of 40 years, provided that the lessee is not in default at that time. The lessee may exercise the option to renew the lease by giving notice to the Nation.

3. The annual rental payment due for the new leases will be $800,000 until this amount is less than the sum of 8% of the land value of the property leased for residential purposes and 10% of the land value of the property leased for non-residential purpose (the "formula"), at which time the amount determined by application of this formula shall become the annual rental payment. The annual rental payment determined by application of this formula shall be adjusted annually by the same percentage at which the full value of property in the City changes, as shown by the Equalization Rate. If the Equalization Rate (or a successor or substitute index similarly adjusted) is not available, the parties shall agree upon the use of a different methodology for determining the rate of change in property values in the City. The parties also agree that the property in the City will be the subject of an objective reappraisal to determine the land value of the leased property, to be completed by the end of the fifth year of the initial forty year term of the leases provided for under this Agreement. The reappraisal of the land value of the leased property shall be conducted by an appraiser retained specifically for this purpose, who is acceptable to both the Nation and the City, and shall be

conducted on terms acceptable to both the Nation and the City. The cost of the reappraisal shall be shared equally by the City and the Nation. The land value as determined by the objective reappraisal conducted under this Section shall become the land value for purposes of calculating the annual rental payment which the lessees collectively will pay under this Agreement.

4. The Nation may, at its option at the end of any five year period of this Agreement: (1) upon satisfactory demonstration to the Joint Leasing Commission that the values used are not representive of market values, initiate an objective reappraisal to determine the land value of the leased property, to be conducted in accordance with Section II.B.3. of this Agreement, or (2) test the methodology used to determine the Equalization Rate through the use of a random sample selection of parcels in accordance with the procedures set forth by the State Board of Equalization and Assessment for such testing. The land value as determined by objective reappraisals conducted under this Section shall become the land values for purposes of calculating the annual rental payment determined by application of the formula set forth under Section II.B.3. of this Agreement. The Equalization Rate as determined by the testing procedures set forth under this paragraph shall become the Equalization Rate used for purposes of determining the annual adjustment in the annual rental payment as provided for under Section II.B.3. of this Agreement.

5. The annual rental payment due the Nation will be apportioned between the lessees and the City and paid according to the following formula: The lessees

collectively will pay the sum of 8% of the land value of property leased for residential purposes and 10% of the land value of property leased for non-residential properties; the City will pay the difference between this amount and $800,000 until the amount paid by the lessees' collectively exceeds $800,000. The rents described in this Agreement shall be the total consideration due from the lessees for the occupancy of the leased lands.

6. Lessees shall agree as provided in Technical Document 2 to tender their annual rental payments to the City, as authorized under federal law by the Act of August 14, 1950, 64 Stat. 442 and in accordance with Chapter 878 of the laws of the State of New York for the year 1953. The City agrees to tender the annual rental payment to the Nation by check payable to the Nation. Notwithstnding the failure of any lessee to pay to the City the amount owed by that lessee, the City agrees to pay the Nation the lessees' collective share of the annual rental payment by tendering full payment to the Nation on or before the date the rent is due and payable.

7. Where any person holding a lease with the Seneca Nation which either expires on February 19, 1991 or is among the leases listed in Document 1 of the Technical Documents does not accept the new lease tendered by the Nation under Section II.B.1. of this Agreement the annual rental payment due from the City to the Nation under Section II.B.3. of this Agreement shall be ratably reduced. The amount of the reduction shall be the amount that would have been due if the new lease had been accepted.

8. Where a member of the Seneca Nation would be entitled to a new lease under this Agreement, the entitlement thereto is hereby modified to the extent that whether or not the Nation shall execute and deliver such new leases to such member of the Seneca Nation shall be determined by the Nation alone. Where no lease is executed pursuant to this Agreement the City shall not be obligated to pay rent to the Nation for that parcel.

9. Where the Seneca Nation or a member of the Seneca Nation acquires the interest of a lessee in a parcel held under a new lease tendered by the Nation under Section II.B.1. of this Agreement, and is not obligated to and electes not to hold the parcel under the new lease, the annual rental payment due from the City to the Nation under Section II.B.3. of this Agreement shall be ratably reduced. The amount of the reduction shall be the amount that would have been due if the parcel were held under the new lease.

10. Additional lease terms are set forth in Document 2 of the Technical Documents.

III. AUTHORITY TO INVESTIGATE COMPLIANCE WITH LEASE TERMS AND THIS AGREEMENT

The parties agree that the Council of the Seneca Nation and any person or persons designated by the Council will have the authority to investigate whether the City and the lessees are in compliance with the lease terms and any provisions in this Agreement relating to lease terms and lease administration. When, in the judgment of the Council or its designees such action is

warranted, the Council may file a complaint under Section IV of this Agreement initiating a binding arbitration on whether there has been a breach of any lease term or provision of this Agreement relating to lease terms or lease administration. In carrying out its responsibilities under this section, the Council or its designees shall have the authority to gather and compile information in all practicable ways, including but not limited to the power to take testimony of witnesses under oath; to issue subpoenas to compel attendance of witnesses or the production of books, records, documents and other evidence. The Council may as part of its investigation prepare reports and recommendations which may be transmitted to the Commission established under section IV.

IV. JOINT LEASING COMMISSION AND DISPUTE RESOLUTION PROCESS

The parties agree to the establishment of (1) a commission which shall be known as the Seneca Nation—City of Salamanca Joint Leasing Commission, and (2) a dispute resolution process for resolving disputes arising under the lease terms and provisions of this Agreement relating to lease terms and lease administration. The composition, powers, and duties of the Commission and the dispute resolution procedures are set forth in Document 3 of the Technical Documents. The objectives of the Commission and the dispute resolution procedures are to ensure that the lessees, the City and the Nation comply with the lease terms and with any provisions in this Agreement relating to lease terms and lease administration.

A. Commission Responsibilities

Among its other duties, the Commission is authorized and directed to:

1. compute the annual rental payment due for the new leases in accordance with Section II.B.3. of the Agreement (hereafter the "annual rental payment") and to apportion the annual rental payment between the lessees collectively and the City of Salamanca in accordance with Section II.B.5. of the Agreement. The City shall make available to the Commission by December 1 of each year all records, figures, and dates within its possession necessary to make the required computation.

2. notify the City annually by December 15 of each year of the share of the annual rental payment collectively owed by the lessees, and of the share of the annual rental payment owed by the City in accordance with Section II.B.5. of the Agreement. The amounts so determined and provided to the City shall be certified to the City by the Commission, and unless disputed by the City within 10 days, shall constitute the annual rental payment and the apportionment thereof between the lessees collectively and the City.

3. verify and confirm annually the amount of the annual rental payment which each individual lessee will pay pursuant to the procedures used by the City to determine said amount, which procedures shall be provided to the Commission at least 60 days before February 19 of each year. The Commission shall certify such amounts to the City, and the City shall then proceed to notify the lessees individually and to collect said amounts from the lessees individually under procedures approved by the Commission.

4. perform other administrative tasks necessary for administration of the leases, provided that the Commission shall have no authority to exempt any lessee from his or her share of the annual rental payment.

B. Initiation of Arbitration

The City, the Nation, or any lessee or sublessee who believes that any other of these parties has failed to comply fully with any lease term or any provision in this Agreement relating to lease terms or lease administration may file a complaint with the Commission initiating arbitration under this Section of the Agreement and pursuant to the procedures set forth in Document 3 of the Technical Documents. However, in any year in which the Nation timely receives from the City the total amount owed by the lessees as their collective annual rental payment, the Nation will have no recourse against individual lessees for failure to make rental payments and the City will have the exclusive right to seek redress from the defaulting lessees for failure to make rental payments. The Nation's right to seek redress against lessees for breach of provisions other than those relating to tender of payment is reserved and will be unaffected by timely payment of such collective annual rental. If, however, the City does not pay the lessees' collective share of the annual rental payment on or before the date it is due, then the Nation may seek redress against the City, the lessees, or both.

V. ADDITIONAL TERMS

A. Electric Utility Service

The City agrees to provide City electric utility service to Nation members and Nation buildings and facilities in Jimersontown on the Allegany Reservation at the same rates applicable within the community of Killbuck, or at a similarly reduced rate if the rate in effect in Killbuck as of the date of execution of this Agreement is eliminated, provided that in no event shall the rate be greater than that charged by the City to consumers outside the City, provided that the Jimersontown area is first determined to be eligible for service by the City's Electric Utility ("Utility") under applicable law, and further provided that the Nation shall make available the poles, lines, and transformers (if necessary) (hereinafter "equipment") needed for the Utility to deliver service to this area, which equipment the Utility shall maintain as part of the service provided and at no cost to the Nation. The Nation and the City agree to jointly take such action as may be needed to establish the eligibility of the Jimersontown area for City electric utility service.

B. West End Properties

The City agrees to take all action which it is empowered to take, including if requested by the Nation seeking an amendment to the City charter from the legislature of the State of New York, to exclude the Nation properties shown on Schedule A, which may be subject to confirmation by survey, from the boundaries of the City, but shall continue to provide City electric, water, and sewer utility service to these properties at the same rates, as to electric utility service, applicable within the community of Killbuck, or at a similarly reduced rate if the rate in effect in Killbuck as of the date of

execution of this Agreement is eliminated, provided that in no event shall the rate be greater than that charged by the City to consumers outside the City, provided that the Nation shall provide the City with the access and easements necessary for the City to continue to provide such service.

C. Salamanca Hospital District Authority Lease

The Nation agrees to provide a new lease with a term and annual rental as set forth in Section II. of this Agreement to the Salamanca Hospital District Authority, provided that this lease shall remain in effect only as long as the premises are used as the site of a community hospital or for directly related purposes, which shall include use as a health care center. The Nation and the City agree to (1) work cooperatively to maintain the property under lease to the Salamanca Hospital District Authority as the site of a community hospital or for directly related purposes, which shall include use as a health care center, and (2) that in the event the property is no longer used as the site of a community hospital or for directly related purposes, which shall include use as a health care center, the further use of the property shall be a matter of lease administration and subject to a plan for its use and development which has been agreed upon by the Nation, and the City, and pursuant to a lease provided in accordance with Section II. of this Agreement on which the term shall be considered to have begun on February 20, 1991.

D. Economic Development

The sum of $3,000,000 from the Economic and Community Development Fund provided for under Section VI. C.1.b. of this Agreement shall be deposited in an escrow account which shall be owned by the Nation. The escrow agent shall be selected by agreement of the Seneca Nation and the City. The escrow account shall remain in existence for a period of ten years from the date on which the principal is deposited, or until all payments provided for under this Section V.D. have been made. The escrow account shall be held and disbursed by said escrow agent as follows.

1. Two-thirds of the income accruing to the escrow account each year shall be paid to the City for economic and community development in the City.

2. One-third of the income accruing to the escrow account each year shall be paid to the Joint Venture Commission on Economic Development.

3. After ten annual disbursements of the income accruing to the escrow account have been made in accordance with this Section V.D., the principal of the account shall be paid to the Seneca Nation to be used for such purposes as the Seneca Nation may authorize.

VI. IMPLEMENTATION AND MODIFICATION

A. Structure of Agreement

This Agreement consists of this document entitled "Agreement" and several separate documents contained in a technical appendix:

1. Document 1: Listing of leases, other than those expiring in 1991, which the Nation agrees to replace with new leases in accordance with this Agreement.

2. Document 2: Lease terms to be incorporated into all leases entered into pursuant to this Agreement.

3. Document 3: Seneca Nation—City of Salamanca Joint Leasing Commission.

Each of these three documents forms an integral part of the Agreement.

B. Ratification By Nation, and City

The Council or the Seneca Nation, on behalf of the Seneca Nation of Indians and the Council of the City of Salamanca, must ratify this Agreement no later than July 14, 1990. Upon ratification, the parties shall convene to develop a plan for implementing the Agreement at the earliest possible date.

C. Federal and State Participation

1. In order to become effective, this Agreement requires that certain actions be taken by the United States Congress. These actions include but are not limited to:

a. Authorizing and appropriating $30,000,000 for the Federal share of the cash payment to the Nation.

b. Authorizing and appropriating $5,000,000 for the Economic Development Fund established for the Nation.

2. In order to become effective, this Agreement requires that certain actions be taken by the legislature of the State of New York, or be subject to an agreement between the Nation and the State which shall have the effect described in Section VI.D.3. These actions are:

a. Authorizing and appropriating $16,000,000 for the State share of the cash payment to the Nation.

b. Authorizing and appropriating $9,000,000 for the State share of the economic development funds to be provided to the Nation.

3. The parties agree that, among the other provisions which must be included in the Federal legislation, the Federal Act must include provisions to the effect that:

a. None of the rental payments made to the Nation and none of the income generated thereby shall be subject to taxation in any fashion whatever.

b. Neither the per capita distributions which may be made by the Nation to individual members from rental payment funds, nor any income generated thereby, shall be subject to taxation in any fashion whatever.

c. None of the payments, funds, or distributions authorized, established, or directed by this Agreement, and none of the income derived therefrom, which may be received by the Nation or individual members of the Nation, shall be subject to levy, execution, forfeiture, garnishment, lien, encumbrance, or seizure in any fashion whatever.

d. None of the payments, funds, or distributions authorized, established, or directed by this Agreement, and none of the income derived therefrom, shall affect the eligibility of the Nation or its members for, or be used as a basis for denying or reducing funds under any government program in any fashion whatever.

D. Effective Date

This Agreement shall become effective when all of the following steps have been accomplished. It is contemplated that the steps will be fulfilled in the following order:

1. Approval of the Agreement by the Seneca Nation of Indians and the City of Salamanca;

2. Enactment of the Federal legislation necessary to effectuate the Agreement, and the appropriation of funds sufficient to cover the Federal share of the cash payment to the Nation and the Economic Development Fund.

3. Enactment of State legislation necessary to effectuate the Agreement, and the appropriation of funds sufficient to cover the State share of the cash payment to the Nation and the State share of the economic development funds to be provided to the Nation, or an agreement between the Nation and the State concerning the schedule and mechanism for payment to the Nation of the funds described in Section C. 2. above, which shall render this Agreement effective for the peirod that payments are made as agreed upon by the Nation and the State, and after such payments have been made as agreed upon, thereafter for the term of the new leases described in Section II.B.1. and 2.

E. Land Acquisition

The funds appropriated under Section VI.C. above may be used at the Nation's option, to acquire lands to increase the land base of the Seneca Nation, provided that such lands shall be outside of that portion of the City of Salamanca that is within the Allegany Reservation.

F. Modification

After ratification of this Agreement by the Seneca Nation and the City of Salamanca, the parties may modify the Agreement or Documents 2 or 3 only by mutual consent.

VII. LEGAL DISCLAIMER

This Agreement, its accompanying Documents 1-3, and all negotiations and exchanges of technical information leading to this Agreement constitute offers of settlement and compromise of disputed issues entered into between the parties expressly pursuant to Rule 408 of the Federal Rules of Evidence. Accordingly, in the event that the above conditions are not met and this Agreement does not become effective, all statements and agreements contained herein and in Documents 1-3, all technical reports exchanged by the parties, and all negotiations conducted by them are in strict confidence and will not be admissible or used in any way against any of the parties to this Agreement, or the beneficiaries of this Agreement, in any judicial, administrative, or arbitration proceeding.

The parties agree that this Agreement (which includes Documents 1-3 of the Technical Documents), including its execution and implementation (1) shall not foreclose any party from making any contention with respect to the interpretation of the 1875 and 1890 Acts or any claim of being or not being a lessee under these Acts; and (2) shall not be deemed an admission by either party with respect to the interpretation of these Acts, now or in the future.

The legal positions reserved under this Section are not and shall not be construed to be lease terms or provisions of this Agreement relating to lease terms or lease administration, and shall not be subject to presentation to or resolution by the dispute resolution process and arbitration procedures established under Section IV of this Agreement and set forth in Document 3 of the Technical Documents.

VIII. DEFINITIONS

For purposes of this Agreement and unless the context requires a different construction:

1. "Agreement" means this document and, after said documents are finalized, will also include the three documents forming a technical appendix to this document; this document may be executed by the parties before the technical documents are finalized.

2. "City" means the City of Salamanca;

3. "Commission" means the Seneca Nation—City of Salamanca Joint Leasing Commission described in section IV of this Agreement and Document 3 of the Technical Documents.

4. "Equalization Rate" means the percentage of full value at which taxable property in the City of Salamanca is assessed, as determined by the State Board of Equalization and Assessment or as revised by the testing procedure set forth under Section II.B.4. of this Agreement.

5. "Council" means the Council of the Seneca Nation of Indians.

6. "Land value: means the value of the land, exclusive of improvements, provided that the use of this term in calculating the annual rental payment shall not effect the Nation's claim for improvements on the leased lands, which claim is preserved under Section VII of this Agreement. The land value for each parcel which is under lease shall be as determined by the objective reappraisals provided for under Section II.B.3. and 4. of this Agreement, provided that until the reappraisal to be completed by the end of the fifth year of the initial forty year term of the leases

provided for under this Agreement, the land value for each parcel shall be determined by the Equalization Rate applied to the assessed land value for each parcel.

7. "Lessee" means a lessee or sublessee under a lease entered into pursuant to this agreement.

8. "Nation" means the Seneca Nation of Indians;

9. "Non-residental" means all types of property except that which is residential.

10. "Residential" means one, two, three, and four-family residences, except cooperatives and condominiums.

11. "Technical Documents" means the three documents which comprise the technical appendix to this Agreement.

SENECA NATION OF INDIANS

By: Dennis M. Lay
President

Date: 7-13-90

CITY OF SALAMANCA

By: Antonio N. Carlose
Mayor

Date: 7-12-90

APPENDIX G(8)

Joint Leasing Commission Agreement Between Seneca Nation and City of Salamanca Executed July 13, 1990

DOCUMENT 3:

SENECA NATION - CITY OF SALAMANCA

JOINT LEASING COMMISSION

Introduction

This document accompanies and is an integral part of the Agreement between the Seneca Nation of Indians and the City of Salamanca ("Agreement"). This document describes the composition, powers, and responsibilities of an administrative body established to compute rent under the leases, and perform other administrative functions, and establishes an arbitration procedure to resolve issues that may arise under the leases.

A. Commission Established. There is hereby established the Seneca Nation-City of Salamanca Joint Leasing Commission [hereinafter referred to as the Commission], which shall exercise powers and responsibilities as set forth in this Document.

B. Membership.

1. The Commission shall consist of five members. Two members shall be appointed by the Council of the City of Salamanca [hereinafter referred to as the City]. The compensation and expenses of the City's members shall be paid by the City. Two members shall be appointed by the Council of the Seneca Nation of Indians [hereinafter referred to as the Nation]. The compensation

and expenses of the Nation's members shall be paid by the Nation. The fifth member shall be selected by agreement of the other four members. The compensation and expenses of that member and all other expenses of the Commission shall be shared equally by the City and the Nation. Each member duly appointed or selected shall hold office for a term of six years, and for so long thereafter until a successor shall be appointed or selected, unless earlier removed. The initial terms of each member shall be staggered, with one member serving a six-year term, one a five-year term, one a four-year term, one a three-year term, and one a two-year term. The initial term of each member shall be chosen by lot, or by any other procedure agreed upon in writing by the first five members of the Commission.

2. Should the four appointed members fail to agree within sixty days of the effective date of this Document or within thirty days after any vacancy occurs, on the selection of the fifth member, the following procedure shall be utilized:

(a) Within five days the City appointees shall nominate no more than five and no fewer than three persons to serve as a member of the Commission and the Nation appointees also shall nominate no more than five and no fewer than three persons to serve as a member of the Commission.

(b) Within fifteen days thereafter the City appointees shall reject all but one of the persons nominated by the Nation appointees and the Nation appointees shall reject all but one of the persons nominated by the City appointees.

(c) The American Arbitration Association shall select the fifth member of the Commission from the remaining two nominees.

3. The removal of the members of the Commission appointed by the Nation shall be governed by and subject to the laws of the Nation. The removal of members of the Commission appointed by the City shall be governed by and subject to the laws of the City.

4. Vacancies on the Commission shall be filled by appointment of a person to serve the unexpired term of the member whose seat has become vacant. If a City appointee becomes unable or unwilling to serve on the Commission or is removed by the City, the Council of the City of Salamanca shall make the appointment within thirty days. If a Nation appointee becomes unable or unwilling to serve on the Commission or is removed by the Nation, the Council of the Seneca Nation shall make the appointment within thirty days. If the fifth member of the Commission becomes unable or unwilling to serve on the Commission, the remaining members shall fill the vacancy under the procedures set forth in paragraphs 1 and 2 of this section.

C. Quorum and Vote Required. Three members of the Commission shall constitute a quorum if reasonable notice has been provided in advance to the absent members. Meetings may be in person or, in appropriate circumstances, by telephone. All meetings of the Commission shall be held on the Allegany Reservation. All acts of the Commission shall be by a majority of the Commission, shall be in writing and, shall be delivered to the Nation, the City, and such other persons or entities as the Commission may designate.

D. Authority of the Commission.

1. The Commission is authorized and directed:

(a) to compute the annual rental payment due for the leases in accordance with Section II.B.3. of the Agreement (hereafter the "annual rental payment") and to apportion the annual rental payment between the lessees collectively and the City of Salamanca in accordance with Section II.B.5. of the Agreement. The City shall make available to the Commission by December 1 of each year all records, figures, and dates within its possession necessary to make the required computation.

(b) to notify the City annually by December 15 of each year of the share of the annual rental payment collectively owed by the lessees, and of the share of the annual rental payment owed by the City in accordance with Section II.B.5. of the Agreement. The amounts so determined and provided to the City shall be certified to the City by the Commission, and unless disputed by the City within 10 days, shall constitute the annual rental payment and the apportionment thereof between the lessees collectively and the City.

(c) to verify and confirm annually the amount of the annual rental payment which each individual lessee will pay pursuant to the procedures used by the City to determine said amount, which procedures shall be provided to the Commission at least 60 days before February 19 of each year. The Commission shall certify such amounts to the City, and the City shall then proceed to notify the lessees individually and to collect said amounts from the lessees individually under procedures approved by the Commission.

(d) to perform other administrative tasks necessary for administration of the leases, provided that the Commission shall have no authority to exempt any leases from his or her share of the annual rental payment.

2. The Commission is authorized:

(a) to adopt rules and regulations to govern its procedures and to carry out its responsibilities under this Document and the Agreement. Such rules and regulations must be consistent with all provisions of the Agreement, this Document, and all federal legislation. All records of the Commission shall be open to public inspection except for privileged information.

(b) to employ or seek assistance of such clerical or other personnel and establish such offices as it deems necessary for the performance of its functions according to the Agreement and this Document. Pending the establishment of a principal office, the Commission's office shall be located at such location convenient to the Commission and the parties as the Commission may designate.

(c) To submit an annual budget, which shall be subject to approval by the City and the Nation. The Nation and the City shall each provide fifty percent of the funds budgeted for the operations of the Commission.

E. *Dispute resolution; arbitration.*

1. The Nation, the City and the lessees shall attempt to resolve any dispute that arises under the lease terms or under provisions in the Agreement relating to lease terms or lease administration by good faith negotiations.

The Commission may mediate such disputes if authorized to do so by the rules and regulations adopted pursuant to Section D.2 (a) of this Document.

2. If after 15 days of negotiations, and at the end of such period of time as the Commission may establish for mediation, a dispute remains, the Nation, the City or any individual lessee who believes that any other of these persons or entities has failed to comply fully with any lease term or any provision in the Agreement relating to lease terms or lease administration, may file a complaint with the Commission initiating binding arbitration under the procedures set forth in this Section. The arbitration panel selected shall have exclusive jurisdiction to resolve, through a process of binding arbitration, any and all disputes and issues arising unde the lease terms or under provisions in the Agreement relating to lease terms or lease administration, which arbitration shall be the exclusive means of resolving such disputes, provided that the legal positions reserved under Section VII of the Agreement shall not be subject to arbitration. Matters subject to arbitration shall include but are not limited to all disputes concerning rental payments, and all disputes concerning compliance with the terms set out in Document 2 of the Technical Documents, provided, however, that if the Nation receives from the City the total annual rental payment, then the Nation shall have no recourse against any individual lessee for failure to make rental payments, and in such case, the City shall have the exclusive right to seek redress from any defaulting lessee. However, if the City does not pay the lessees' full share, then the Nation may seek redress against the City, any defaulting lessees, or both.

3. Arbitration initiated under this section shall take place under the following procedures. A panel of arbitrators consisting of three members shall be appointed. One member shall be appointed by the Nation and one member shall be appointed by the person or entity filing the arbitration complaint ("complainant"), or if the Nation files the complaint, by the person or entity against whom the complaint is filed ("respondent"), each to be appointed within five days of the filing of the complaint initiating arbitration. The third member shall be selected by agreement of the other two members. In the event the two members cannot agree upon the third arbitrator within ten days, the third arbitrator shall be chosen by the American Arbitration Association. The compensation and expenses of the Nation's appointee shall be paid by the Nation. The compensation and expenses of the complainant's or respondent's appointee, as the case may be, shall be paid by the complainant or respondent. The compensation and expenses of the third arbitrator and all other expenses of arbitration shall be shared equally by the Nation and the complainant or respondent. The City shall have the right to intervene as a party in all arbitration proceedings in which the lessee is the complainant or respondent.

4. Meetings of arbitrators may be in person or, in appropriate circumstances, by telephone. The arbitration panel may consolidate proceedings presenting similar issues on motion of any party, or on its own motion. All decisions of the arbitration panel, shall be by majority vote, in writing and, together with any dissenting opinions, shall be delivered to all parties to the arbitration proceeding and to the parties to this Agreement.

5. The arbitration panel shall have the power to administer oaths to witnesses, to take evidence under oath, and to issue subpoenas to compel the attendance of witnesses or for the production of books, records, documents and other evidence.

6. The arbitration panel shall hold hearings in proceedings before it and shall give advance notice to the Seneca nation, the City of Salamanca, and all parties to any proceeding, personally or by certified mail return receipt requested no fewer than five days before any hearing. Appearance at a hearing waives such notice. The arbitration panel may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. The Nation, the City, and all parties to the proceeding are entitled to be heard, to present evidence material to the controversy, to cross-examine witnesses appearing at the hearing, and to be represented by counsel at their own expense. The arbitration panel shall decide matters submitted to it within sixty days of the date on which the matter is deemed under submission by the Commission.

F. Review and Enforcement of Arbitration Decisions.

1. Decisions of the arbitration panel shall be effective immediately, unless stayed for a period of time prescribed by the arbitration panel. On application of a party within a reasonable time, but in any event no more than ninety days afer a decision is rendered, the arbitration panel may modify or correct any decision, and may make such modification or correction retroactive to the date of the initial decision:

> (a) where there was an evident material miscalculation of the figures or any evident material mistake in the description of any person, thing or property referred to in the decision;

(b) where the decision is imperfect in a matter of form not affecting the merits of the controversy; or

(c) where the decision requires clarification.

2. Any party to the arbitration proceeding may, within ten days of any final decision, apply to the arbitration panel to modify or set aside any aspect of the decision. Notice of such application shall be served personally or by certified mail return receipt requested upon all parties to the proceeding, the Clerk of the Seneca Nation, and the Clerk of the Council of the City of Salamanca. Any other party shall have ten days within which to respond to the application. The arbitration panel shall act on such application within ten days after a response is filed or, if no response is filed, within fifteen days after the application is filed. If the arbitration panel fails to act within the time limitations set forth in this paragraph, the application shall be deemed denied. The time for appeal provided in paragraph 3 of this section shall not begin to run until the application is determined as provided in this paragraph.

3. Any party before the arbitration panel may seek review of any final decision by the arbitration panel only in the United States District Court for the Western District of New York. Such an appeal must be filed within thirty days of such decision. The notice of appeal shall be filed with the Court and served personally or by certified mail return receipt requested upon the Clerk of the Nation, the Clerk of the Council of the City, the arbitration panel, and all parties to the arbitration proceeding, and all such persons and entities shall thereafter have the right to participate in the appeal.

4. In any appeal, the arbitration panel's decision shall be presumed to be valid, and may be vacated by the Court only on one of the following grounds:

(a) the decision as procured by corruption, fraud or undue means;

(b) there was evident partiality or corruption by the arbitration panel, or by any member;

(c) the arbitration panel was guilty of misconduct in refusing to hear the dispute, or in refusing to hear evidence pertinent and material to the controversy, or any other clear misbehavior by which the rights of any party have been substantially prejudiced;

(d) the arbitration panel exceeded its authority under the terms of this Document; or

(e) the decision is arbitrary and capricious or contrary to law.

5. Unless an appeal is timely filed as provided in paragraph 3 of this section, any decision of the arbitration panel shall be confirmed or enforced by the United States District Court for the Western District of New York, on petition of the Nation, the City, or any party to the arbitration proceeding in which the decision was made.

6. When a timely appeal is filed pursuant to paragraph 3 of this section, or a petition to confirm or enforce is filed pursuant to paragraph 5 of this section, the United States District Court for the Western District of New York may order such temporary or permanent relief as it considers just and proper.

7. An appeal may be taken from any decision of the court in which a timely appeal is filed pursuant to paragraph 3 of this section, or in which a petition to confirm or enforce is filed pursuant to paragraph 5 of this section, in the manner and to the same extent as from orders or judgments of the Court in a civil action.

8. In any appeal or petition to confirm or enforce the arbitration panel's decision, the arbitration panel shall promptly file with the Court the record of the arbitration proceedings.

SENECA NATION OF INDIANS

By: Dennis M. Lay
President

Date: 7-13-90

CITY OF SALAMANCA

By: Antonio N. Carlose
Mayor

Date: 7-12-90

APPENDIX G(9)

Salamanca Indian Lease Authority
Authorization Form Executed by Lessees,
September 12, 1987

ACCOUNT NUMBER 01149
PARCEL ID 73-062-1-22
PARCEL ADDRESS Lot/Fair Oak

LEASE NUMBERS D8

Cleveland, Margaret
33 Newton St. CR 07
Salamanca, NY 14779

AUTHORIZATION

(I) (We) the undersigned, as holder(s) of a lease or leases from the Seneca Nation of Indians, wish to exercise (my) (our) renewal rights, and authorize the Salamanca Indian Lease Authority to negotiate with the Seneca Nation of Indians and its legally authorized representatives for the terms and provisions of a renewal of such lease(s); provided, however, that (I) (we) may cancel such authorization in writing at any time and provided, further, that the Salamanca Indian Lease Authority shall have no authority to execute or accept such a renewal lease for (me) (us) without (my) (our) specific written authority.

Date: Sept. 12, 1987

MARGARET CLEVELAND
Lessee
or
Authorized Representative (If Corp.)

_____

Co-Lessee (Spouse)

Please sign and return the first two copies of this form in the enclosed postage paid envelope as soon as possible. Be sure the address below shows in the window before sealing.

SALAMANCA INDIAN LEASE AUTHORITY
225 WILDWOOD AVENUE CR 01
SLAMANCA, NEW YORK 14779

APPENDIX G(10)

Revocation of Salamanca Indian Lease Authority Authorization Executed by Lessees, November 2, 1990

November 2, 1990

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Salamanca Indian Lease Authority
225 Wildwood Avenue
Salamanca, New York 14779

Re: Revocation of Authorization

TO WHOM IT MAY CONCERN:

Please be advised that any previous authorization given by the undersigned to the Salamanca Indian Lease Authority to "negotiate with the Seneca Nation of Indians and its legally authorized representatives for the terms and provisions of a renewal of such lease(s)" is hereby cancelled effective immediately.

This cancellation of authorization pertains to property leased by the undersigned commonly referred to as _____.

Very truly yours,

_____

APPENDIX G(11)

Salamanca Indian Lease Authority
Response to Revocation Letters,
November 14, 1990

(Seal) (716) 945-4620

CITY OF SALAMANCA

Salamanca Indian Lease Authority
225 Wildwood Avenue
Salamanca, New York 14779

November 14, 1990

27 Central Ave.
Property Location

Dear Leaseholder:

The SILA acknowledges receipt of your prototype letter dated November 2, 1990.

The consent which you executed to the SILA and which you now request to withdraw has already been exercised by the SILA in as much as the negotiations which the consent authorized have long since been concluded—a fact of which we are sure you are aware.

The SILA will attribute some purposeful reason for your withdrawal of such consent, to wit:

1. That the SILA is not authorized to conduct any further lease negotiations on your behalf.

2. That you have anticipatively rejected the new proposed lease and consequently your name will be removed from the roll of those entitled to acquire a new lease as the same has been proposed. In furtherance of this interpretation of your letter we have, on this date, advised the Seneca Nation of Indians of your rejection of

the newly proposed lease and requested the SNI to remove your name from the list of those entitled to a newly proposed lease.

The SILA respectfully, but specifically objects to your letter attempt to both reject the newly proposed lease and at the same time reserve to yourself the opportunity to void your rejection and return to it at a later time. It is necessary for the City as collector of Indian lease rentals and preparer of the Indian lease rolls to compile such rolls in advance of the billing and payment dates. Consequently, your rejection of the newly proposed lease has been accepted as a complete and total rejection.

Should you in the future either negotiate a new lease with the SNI or be awarded a lease through arbitration the City of Salamanca will pick you up on its Indian lease rolls.

By your actions of rejection of the proposed lease and seeking to negotiate a new lease of your own, (which itself is a rejection of the proposed lease) we can perceive that you have placed yourselves in serious jeopardy for the following reasons:

1. The Indian Settlement Act of 1990 requires the SNI only to execute new leases with "lessees who accept the SNI's offer of a new lease." The "new lease" referred to is the one filed with the Secretary of Interior viz. the proposed lease. (Sec. 7 Seneca Nation Settlement Act of 1990.)

2. Negotiations for a new lease have already occurred—thus, allowing the SNI to deny negotiations to you.

3. A condition of arbitration is that negotiations take place—they have taken place but you have rejected the negotiations. Had you accepted the negotiations, you would have been entitled to go to arbitration, on the basis that the negotiated terms are not acceptable.

4. The SNI is presently immune from suit. Thus, you cannot sue the SNI under your perception that you have been denied rights by the SNI.

5. You have conditioned negotiations upon the SNI's acceptance of a renewal for 99 years. You did not otherwise request negotiations.

6. You attempted to reserve, with the SILA, a right to return to the proposed lease. This is not something the SILA can give you—the execution of a lease is strictly within the perogative of the SNI.

The SILA will not assume any further obligation for your lease interests and will make no further efforts on your behalf.

Salamanca Indian Lease Authority

APPENDIX G(12)

Plaintiffs Renewal Letters to Seneca Nation, November 2, 1990

November 2, 1990

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dennis M. Lay, President
The Seneca Nation of Indians
1490 Rt. 438
Irving, New York 14081

Re: Lease Renewal

Dear Mr. Lay:

Please be advised that I am currently a lessee in the City of Salamanca under a 99-year lease granted pursuant to 18 Stat. 330—"Authorizing New York Indian Leases and Confirming Existing Leases" (1875) (hereinafter referred to as the "Act of 1875") and 26 Stat. 558—"An Act to Authorize the Seneca Nation of New York Indians to Lease Lands Within the Cattaraugus and Allegany Reservations and to Confirm Existing Leases" (1890) (hereinafter referred to as the "Act of 1890").

As lessee (and/or assignee of a lease) pertaining to property commonly known as _____, I hereby advise you that I am electing under the Act of 1875 and the Act of 1890 to renew my lease for an additional 99-year term. I have been told that the current 99-year leases expire on February 19, 1991. Given the extremely short period of time between the date of this renewal and the expiration of the 99-year lease, I must request that the Seneca Nation of Indians advise me

immediately of its position with respect to this renewal. Please confirm your acceptance of this renewal no later than November 12, 1990. If I have not heard from you by that date, I will be forced to conclude that the Seneca Nation of Indians has rejected this renewal.

In the event of your acceptance of this renewal, I hereby appoint Robert H. Smith, Acting Dean, Boston College Law School, 885 Centre Street, Newton, Massachusetts 02159 to act as my referee for purposes of negotiating the "conditions" or "the amount of annual rents to be paid" pursuant to the renewed lease as provided in the Act of 1875.

This exercise of my renewal of the 99-year lease is entirely without prejudice to any right I may now have or hereafter obtain with respect to the proposed lease agreement which contemplates a 40-year term with one 40-year period renewal which was negotiated by and between the Seneca Nation of Indians and the Salamanca Indian Lease Authority. This letter constitutes neither an acceptance nor rejection of that lease agreement and it is my understanding that my option to execute that Lease Agreement continues through and including February 19, 1991.

Very truly yours,

---

cc: Hon. George Bush, President
Hon. Amory Houghton, House of Representatives
Hon. D. Patrick Moynihan, U. S. Senate
Hon. Antonio N. Carbone, Mayor
Dennis M. Lay, President
c/o P.O. Box 231
Salamanca, New York 14779

November 2, 1990

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dennis M. Lay, President
The Seneca Nation of Indians
1490 Rt. 438
Irving, New York 14081

Re: Lease Renewal

Dear Mr. Lay:

Please be advised that I am currently a lessee in one of the Congressional Villages commonly known as _____. I hold a 99-year lease granted pursuant to 18 Stat. 330—"Authorizing New York Indian Leases and Confirming Existing" Leases (1875) (hereinafter referred to as the "Act of 1875") and 26 Stat. 558—"An Act to Authorize the Seneca Nation of New York Indians to Lease Lands Within the Cattaraugus and Allegany Reservations and to Confirm Existing Leases" (1890) (hereinafter referred to as the "Act of 1890").

As lessee (and/or assignee of a lease) pertaining to property commonly known as _____, I hereby advise you that I am electing under the Act of 1875 and the Act of 1890 to renew my lease for an additional 99-year term. I have been told that the current 99-year leases expire on February 19, 1991. Given the extremely short period of time between the date of this renewal and the expiration of the 99-year lease, I must request that the Seneca Nation of Indians advise me immediately of its position with respect to this renewal. Please confirm your acceptance of this renewal no later

than November 12, 1990. If I have not heard from you by that date, I will be forced to conclude that the Seneca Nation of Indians has rejected this renewal.

In the event of your acceptance of this renewal, I hereby appoint Robert H. Smith, Acting Dean, Boston College Law School, 885 Centre Street, Newton, Massachusetts 02159 to act as my referee for purposes of negotiating the "conditions" or "the amount of annual rents to be paid" pursuant to the renewed lease as provided in the Act of 1875.

This exercise of my renewal of the 99-year lease is entirely without prejudice to any right I may now have or hereafter obtain with respect to any proposed lease agreement. I understand there may have been some negotiations by and between individuals in the Congressional Village of _____ and the Seneca Nation. I have not however seen, nor been provided with, any proposed lease which may have resulted from those negotiations. This letter constitutes neither an acceptance nor rejection of any proposed lease agreement.

Very truly yours,

_____

cc: Hon. George Bush, President
Hon. Amory Houghton, House of Representatives
Hon. D. Patrick Moynihan, U. S. Senate
Hon. Antonio N. Carbone, Mayor
Dennis M. Lay, President
c/o P.O. Box 231
Salamanca, New York 14779

November 9, 1990

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dennis M. Lay, President
The Seneca Nation of Indians
1490 Rt. 438
Irving, New York 14081

Re: Lease Renewal

Dear Mr. Lay:

Please be advised that I am currently a lessee under a lease with the Seneca Nation of Indians and I reside at the above address. I have recently become aware that on or before _____ I was entitled to a 99-year lease granted pursuant to 18 Stat. 330—"Authorizing New York Indian Leases and Confirming Existing Leases" (1875) (hereinafter referred to as the "Act of 1875") and 26 Stat. 558—"An Act to Authorize the Seneca Nation of New York Indians to Lease Lands Within the Cattaraugus and Allegany Reservations, and to Confirm Existing Leases" (1890) (hereinafter referred to as the "Act of 1890").

I understand that pursuant to the Acts of 1875 and 1890 I was entitled to a renewal of that 99-year lease for an additional term of up to 99 years. Yet, in _____, I was offered no option by the Seneca Nation of Indians with respect to any renewal of my lease and instead was given only the choice of accepting a 50-year lease with the Seneca Nation or nothing at all. Under those circumstances, and without understanding my rights and, I believe contrary to the Acts of 1875 and 1890, the Seneca Nation of Indians purported to grant a 50-year lease to me with respect to the above property.

Since the original 99-year lease has not yet expired, and I understand it will not expire until February 19, 1991, I am hereby giving notice to the Seneca Nation of Indians of my intent to claim my rights under that lease and to renew that lease for an additional 99-year term.

Given the extremely short period of time between the date of this renewal and the expiration of the 99-year lease, I must request that the Seneca Nation of Indians advise me immediately of its position with respect to this renewal. Please confirm your acceptance of this renewal no later than November 16, 1990. If I have not heard from you by that date, I will be forced to conclude that the Seneca Nation of Indians has rejected this renewal.

In the event of your acceptance of this renewal, I hereby appoint Robert H. Smith, Acting Dean, Boston College Law School, 885 Centre Street, Newton, Massachusetts 02159 to act as my referee for purposes of negotiating the "conditions" or "the amount of annual rents to be paid" pursuant to the renewed lease as provided in the Act of 1875.

This exercise of my renewal of the 99-year lease is entirely without prejudice to any right I may now have or hereafter obtain with respect to the 50-year lease or the proposed lease agreement which contemplates a 40-year term with one 40-year period renewal which was negotiated by and between the Seneca Nation of Indians and the Salamanca Indian Lease Authority. This letter constitutes neither an acceptance nor rejection of that proposed 40/40 lease agreement and it is my

understanding that my option to execute that lease agreement continues through and including February 19, 1991.

Very truly yours,

_____

cc: Hon. George Bush, President
Hon. Amory Houghton, House of Representatives
Hon. D. Patrick Moynihan, U. S. Senate
Hon. Antonio N. Carbone, Mayor
Dennis M. Lay, President
c/o P. O. Box 231
Salamanca, New York 14779

APPENDIX G(13)

Seneca Nation Response to Renewal Letter, November 9, 1990

(SEAL)

THE SENECA NATION OF INDIANS

1490 Rt. 438
IRVING, NEW YORK 14081
Phone (716) 532-4900
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P. O. Box 231
SALAMANCA, NEW YORK 14779
Phone (716) 945-1790

PRESIDENT - Dennis M. Lay, P.O. Box 26, *Mile Block Road, Lawtons, N.Y. 14091*
CLERK - *Barbara Hemlock RR #1 Box 270, Lawtons, N.Y. 14091*
CLERK - *Cheryl A. Ray, P.O. Box 68, Steamburg, N.Y. 14783*

November 9, 1990

Mr. Paul Prusinowski
18 Liberty St.
Salamanca, NY 14779

Dear Mr. Prusinowski:

I have received your letter of November 2, 1990, in which you assert that you are the lessee of Nation lands in the City of Salamanca under a 99 year lease which will expire on February 19, 1991, and address other matters concerning the leasehold interest which you claim.

A. *The lease documentation process*

As you know, the Nation and the City of Salamanca have, in accordance with the Agreement Between the Nation and the City ("Agreement"), established a

process for reviewing lessees' lease documents for the purpose of determining whether persons claiming an interest in a lease of Nation lands within the City are the present holders of such a lease. The purpose of this process is, in part, to protect both the Nation and the lessee from the possibility of person claiming an interest in leased lands for which the leasehold is actually held by another person or entity. This process is described in a letter transmitted to all persons claiming such an interest. The letter, dated September 4, 1990, offers the new lease enclosed with it to any person holding a lease with the Seneca Nation which either (1) expires on February 19, 1991, or (2) is among the leases listed in Document 1 of the Technical Documents to the Agreement. (Document 1 mostly lists fifty year leases which the Nation concluded in the 1970's). The offer is conditioned on persons claiming an interest in such a lease showing that they hold a lease which is within one of these two categories.

Your letter does not indicate whether you are presently engaged in this process, nor does it provide the information needed for the Nation to determine whether you presently hold such a lease. If you are presently engaged in this process, then, as is indicated in the letter of September 4, 1990, the Nation will contact you after the City has completed its review of your lease documents and has transmitted these documents to the Nation. Unless you present satisfactory evidence that you hold a current lease the Nation cannot and does not accept your claim that you hold such a lease.

B. *The additional matters you raise.*

Your letter also makes two further assertions. First, you state that you are "electing under the Act of 1875 and the Act of 1890 to renew (your) lease for an additional

99-year term". Second, you assert that the letter "constitutes neither an acceptance or rejection of that lease agreement. . . .". I address these in order. In this part of my letter, I assume but do not concede, that you hold a lease which is presently valid. First, the 1875 and 1890 Acts do not grant you the right to make an "election" to renew any lease you presently hold.

If you were to purse the course which your letter describes, one of the first questions which would arise would be whether the Nation is obligated or authorized under the 1875 and 1890 Acts to provide any renewal. If not, then there would be no authority for arbitration, and nothing to arbitrate. Another question, which would arise only if the first question were answered in the affirmative, would be the term of years for any renewal. The 1890 Act states that renewal shall be "for a term not exceeding ninety-nine years. . . .". Two years later, beginning in 1892, and continuing for some years thereafter, leases in the City were renewed, some for a term of 99 years, others for a term less than 99 years. The renewal term expires on February 19, 1991. Whether the 1890 Act has any application now—which would be another issue—that Act means, in plain English, that a renewal term *could be less—but not more*—than 99 years.

There are other issues that would have to be decided in any contested proceeding. These include, for example: (1) what the annual rental would be for any property to be leased; and (2) the rate of return on any leased property.

You should be aware that the longest lease currently offered by the Nation—apart from that provided with the September 4 letter—is 20 years, with an option to renew for an additional years. In addition, the longest lease for Indian reservation lands which is currently authorized by federal law is 25 years, with an option to renew for a

second 25 years. In contrast, as you know, the leases provided for under the Agreement have a 40 year term, which the lessee may renew on the same terms and conditions for a second term of 40 years.

You should also be aware that the expert appraisers and economists the Nation has retained—and will use in any contested proceeding—have advised us that the fair rental value of the land in the City, based on land values in comparable communities, is between two and three times higher than the rental we have offered you in our September letter.

If the rental value includes improvements—as we think it does—the fair rental increases much more. Our appraisers and economists would testify on the Nation's behalf in any contested proceeding—having advised us that the fair rental value of the land in the City, based on land values in comparable communities, is between two and three times higher than the rental value includes improvements—as we think it does—the fair rental increases much more. Our appraisers and economists would testify on the Nation's behalf in any contested proceeding you initiate.

I am telling you all this so that you will understand that our September 4 letter is a compromise offer. If you instead decide to litigate or seek to arbitrate, that is your decision. But the Nation cannot and will not be bound by our September 4 offer if you choose to do so. If you do proceed to litigate or to seek to arbitrate, the Nation will treat your action as rejecting our offer and that offer will be withdrawn effective upon commencement of such action, irrespective of any statement by you to the contrary.

On all of the issues described above, the Nation would have to assert the positions which were in the Nation's best interests, as well as all available defenses, including

the Nation's immunity from suit. These issues are questions of federal law. *United States v. Forness*, 125 F.2d 928 (2d Cir. 1942).

As I stated, these issues include, among others (a) whether the Nation is under any obligation to continue to lease Nation property in the City; (b) whether the Nation is, or would be upon expiration of the prior leases, the owner of the improvements which are physically located on Nation property; and (c) whether, if the Nation is obligated to, or would agree to further leasing of Nation property, rent would be based on (i) land and improvements, or (ii) land. The complexity of these issues is increased by the several different kinds of leases which exist in the City, which were entered into at different times, and on different terms.

For these reasons, we think that the Agreement between the Nation and the City and the lease terms which have been offered are in your best interest as a lessee. The Agreement and the new lease avoid the risks which the issues described above present. At the same time, both the Agreement, and the new leases—in section 28—provide that the lessees, the City, and the Nation each reserve all issues of interpretations of the 1875 and 1890 Acts.

For these reasons, the pursuit of the course of action to which your letter refers in asserting that you are electing to renew your lease for a 99 year term would constitute a rejection of the lease which has been offered on the terms which are set forth in the lease itself and in the letter of September 4, 1990. That course is entirely inconsistent with the prior offer, not simply by reason of the difference in term, but because the course proposed is precisely that which the Agreement and the lease offer were developed to avoid.

In closing, we urge you to reconsider the course to which you letter refers and to accept the new lease, which we think is in the best interests of the lessees. If, however, you do not reconsider and give us further notice of an intent to litigate or to seek to arbitrate, all these issues would be presented for resolution and our offer will be withdrawn effective upon commencement of such action, irrespective of any statement by you to the contrary.

Sincerely,

THE SENECA NATION OF INDIANS

DENNIS M. LAY
Dennis M. Lay
President

APPENDIX G(15)

Seneca Nation's Response to Petitioners' February 7, 1991 Letter

Salamanca Press—Monday, February 18, 1991

THE SENECA NATION OF INDIANS

(This letter is response to those lessees who have written letters dated February 7, 1991 to the Seneca Nation.)

February 13, 1991

Dear Lessee:

Your letter of February 7 inquires as to the current status of the "40/40" leases offered by the Nation to existing lessees in the City of Salamanca on September 4, 1990, and to lessees in the congressional villages in November 1990. You also ask if the existing lessees of Nation lands have any options in addition to the proposed new lease, such as renewing their existing leases, negotiating different terms or demanding arbitration. I will respond to your questions below.

First, the Nation's offer of new "40/40" leases remains open until February 19, 1991. To accept it, a lessee should sign the new lease submitted to that lessee, and supply the property description for the parcel to be leased in the blank on page 1. If a single parcel on which a lessee's home or business is located is held under more than one former lease, these should be consolidated into one description. The executed lease should be submitted to the City at the City Building, 225 Wildwood Avenue, Salamanca by 5 p.m. on Tuesday, February 19. At the same time a lessee must submit proof with the executed new lease that he or she is a person holding a lease with the Seneca Nation which either (1) expires on February 19, 1991, or (2) is among the leases listed in Document 1

of the Technical Documents to the Agreement. (Document 1 mostly lists fifty year leases which the Nation concluded in the 1970's).

The Nation and the City will process any lease submitted to the City by February 19 at 5 p.m. This processing has been ongoing for months and is completed as to most lessees. More than 1700 new leases have been submitted to date. The City and Nation are making every effort to complete the processing by February 19. If that cannot be accomplished, we will process any new lease signed and accepted by a lessee and submitted to the City by February 19 at 5 p.m., even if that takes a short time after February 19.

After the City has processed the new leases submitted to it, it will then transmit the information provided by each individual lessee to the Nation so that the Nation may review this information and prepare to execute the new lease(s). If the information is in order, the Nation will execute the lease. If it is not, the Nation and City will contact the individual lessee to discuss any deficiencies, and giving the lessee a reasonable opportunity to correct them, even if that requires a short time period after February 19.

Second, you ask what other options may be available for existing lessees.

As your letter states, the question of whether there is a right to renew your current lease is presently involved in litigation. The Nation's position in that litigation is that no existing lessee has a legal right to renew any existing lease. The Nation will not accept a renewal of any current lease for an additional 99-year term. Those leases, I am sure you know, have been determined by Congress and the courts to be for fixed rentals greatly below fair market value. Under no circumstances will the

Nation agree to construe leasing its lands at below fair market values by renewing the existing leases that have fo so long subsidized lessees of our lands at our expense. Nor does the Nation, agree that any existing lessee has a legal right to demand arbitration concerning a renewal lease or new lease terms. As I expect you know, both the Agreement, and the new leases—in Section 28—provide that the lessees, the City, and the Nation each reserve all issues of interpretation, of the 1875 and 1890 Acts, including any right you may have under those acts to a renewal after the new 40/40 lease expires.

Your letter also states that you have been advised by the Salamanca Indian Lease Authority that if you do not wish to accept the 40/40 lease, you "should request that the Seneca Nation enter into negotiations . . . for a different lease." As I am sure you are aware, the Nation negotiated for several years with the Salamanca Indian Lease Authority and the elected officials of the City of Salamanca to settle the question of whether non-Indian lessees could continue to occupy the Nation's lands in Salamanca and the congressional villages, and what the terms of any continued occupancy would be. The new "40/40" lease offered in our September 4 letter was a compromise offer, agreed to by the Nation and the City after these years of negotiations.

The issues we negotiated about and reached a resolution of include, among others (a) whether the Nation is under any obligation to continue to lease Nation property in the City and villages; (b) whether the Nation is, or would be upon expiration of the prior leases, the owner of the improvements which are physically located on Nation property; and (c) whether, if the Nation is obligated to, or would agree to, further leasing of Nation property, rent should be based on the value of (i) land and improvements, or (ii) land alone. On the matter of rental,

you should be aware that the expert appraisers and economists the Nation has retained have advised us that the fair rental value of the land in the City, based just on the land values in comparable communities, is between two and three times higher than the rental we have offered in our September 4 letter. (If the rental value includes improvements—as we think it does—the fair rental increases much more.) The Nation nonetheless accepted the terms of the compromise offer because we wished to reach a comprehensive resolution of the overall controversy and so as not to deprive people of homes or a community they have lived in for years.

The Nation does not foreclose negotiating with individual, lessees who accept our September 4 offer. We have done that already with a few lessees who have presented special problems. We will continue to do that for a lessee who has accepted the September 4 lease offer by February 19, but requires a reasonable adjustment for some specific difficulty we have not anticipated. But the Nation will expect the basic structure offered in our September 4 offer to be adhered to, and would not agree in negotiations to alter major items, such as the term of the leases of basis for rental calculations, in any way that is unfavorable to the Nation.

The Nation recognizes your privilege to reject the compromise offer we have agreed to with the City. We think, however, that the lease terms which have been offered are in your best interest as a lessee. We believe your elected City officials and the Salamanca Lease Authority agree.

Sincerely,
Calvin John
President
THE SENECA NATION
OF INDIANS

APPENDIX G(14)

Petitioners' Letter Seeking Negotiations of New Lease, February 7, 1991

February 7, 1991

Calvin John, President
Seneca Nation of Indians
P. O. Box 231
Salamanca, New York 14779

Re: Request Regarding Status of New Leases

Dear President John:

I have been advised by the Salamanca Indian Lease Authority to contact the Seneca Nation directly regarding necessary arrangements to continue to process and execute the proposed 40/40 Lease. Please let me know what is the current status of the lease execution process and whether my 40/40 Lease will be available for execution on February 19, 1991.

I would also like to know if any options exist in addition to the 40/40 Lease. I know that the question of whether there is a right to renew my current lease is presently involved in litigation. I have been advised by the Salamanca Indian Lease Authority that if I do not wish to accept the 40/40 Lease that I should request that the Seneca Nation enter into negotiations with me for a different lease. In the alternative, it has been suggested that I am free to demand arbitration of new lease terms in lieu of negotiation.

I want to make it clear that I am not rejecting the 40/40 Lease; in fact I would like to know when that lease will be available for execution and where. However, I also would like the Seneca Nation's position with respect

to the questions of renewal, negotiation for a new lease and arbitration. I need this information to make an informed decision about this matter.

If the Nation would accept a renewal of my current lease under its terms and the Acts of 1875 and 1890, I would like to express my interest in pursuing such a renewal for an additional 99-year term.

Very truly yours,

_____

APPENDIX G(16)

Petitioners' Letter Demanding Negotiations and/or Arbitration and Tendering Rent, February 19, 1991

February 19, 1991

City of Salamanca
Collector of Indian Rents
225 Wildwood Avenue
Salamanca, New York 14779

Mr. Calvin John, President
Seneca Nation of Indians
P. O. Box 231
Salamanca, New York 14779

Re: Renewal of Lease Pursuant to Existing Lease and Acts of 1875 and 1890

TO: Collector of Rents for the Seneca Nation of Indians

It is my intention to renew my current lease for a term of 99 years pursuant to the renewal clause in my lease and pursuant to the renewal provisions in the Acts of 1875 and 1890. I hereby demand that you enter into negotiations with me for the terms and conditions of this renewal period as required by Section 3 of the Act of 1875 and as is required by my lease which incorporates the renewal provisions of the Act of 1875. If you choose not to enter into negotiations with me, or if you choose to treat the negotiations had between SNI and SILA as having satisfied the negotiation requirement of Section 3 of the Act of 1875, then I hereby demand that you appoint an arbitrator. As required by Section 3 of the Act of 1875, if negotiations have failed to achieve an

agreement on the terms and conditions of a renewal period, then you are required to enter into binding arbitration to establish such terms and conditions.

I hereby nominate Professor Robert H. Smith, Boston College Law School, to serve as my referee/arbitrator for the purposes of binding arbitration to establish the terms and conditions of the renewal period.

I am hereby tendering my annual lease payment as required by my current lease.

Very truly yours,

Indian Lease #	Name
Indian Lease #	Address
Indian Lease #	

APPENDIX G(17)

Seneca Nation's Response to Petitioners' February 19, 1991 Letter

(SEAL) THE SENECA NATION OF INDIANS

1490 Rt. 438
IRVING, NEW YORK 14081
Phone (716) 532-4900
Phone (716) 532-4907
Fax #(716) 532-9132

P.O. Box 231
SALAMANCA, NEW YORK 14779
Phone (716) 945-1790
Fax #(716) 945-3917

PRESIDENT - *Dennis M. Lay, P. O. Box 26, Mile Block Road, Lawtons, N. Y. 14091*
CLERK - *Barbara Hemlock, RR #1 Box 270, Lawtons, N. Y. 14091*
TREASURER - *Cheryl A. Ray, P. O. Box 68, Steamburg, N. Y. 14783*

March 13, 1991

Dean Kilbourn
52 Messenger Street
Salamanca, New York 14779

Prop. Loc. 52 Messenger St.
Acct. #02075

This letter responds to your letter of February 19, 1991, stating an intention to renew the lease you claim you currently hold for a term of 99 years, and demanding that the Nation enter negotiations with you concerning the terms and conditions of such a renewed lease.

The question of whether you have a right to renew any current lease you hold is presently involved in the Fluent litigation. The Nation's position in that litigation is that no existing lessee has a legal right to renew any existing lease. The Nation therefore will not at this time consider renewing any current lease for an additional 99-year term, or negotiating with you on the basis set forth in your February 19 letter. Moreover, the Nation's position

is that no existing lessee has a legal right to demand arbitration concerning a renewal lease or new lease terms.

Your letter tenders an annual lease payment under your current lease. This payment is returned herewith. The Nation considered that your current lease expired on February 19, 1991. However, pursuant to order of the United States Court of Appeals, the Nation is maintaining the status quo until further order of that court.

Sincerely,

CALVIN JOHN
Calvin John
President
SENECA NATION OF INDIANS

APPENDIX G(18-a)

Affidavit of Jennifer A. Coleman
Dated February 13, 1991

UNITED STATES COURT OF APPEALS
for the SECOND CIRCUIT

JOSEPH FLUENT, Individually and as a representative of the Class of Salamanca Lessees holding 99-year leases from Seneca Nation of Indians; JAMES V. MONGILLO, Individually and as a representative of the class of Salamanca lessees holding 50-year leases from the Seneca Nation of Indians and KEITH MCCLAIN, Individually and as a representative of the class of congressional village lessees holding 99-year leases from the Seneca Nation of Indians; ROBERT ADAMIC, Individually and on behalf of the class of lessees who signed the "40/40 Lease" Tendered by the Seneca Nation of Indians on or about September 4, 1990; MARILYN ADAMIC, Individually and on behalf of the class of lessees who signed the "40/40 Lease" Tendered by the Seneca Nation of Indians on or about September 4, 1990; SALAMANCA COALITION OF UNITED TAXPAYERS, INC., Individually and on behalf of its membership,

Plaintiffs-Appellants,

vs.

SALAMANCA INDIAN LEASE AUTHORITY; DAVID FRANZ, Individually and as Attorney for the City of Salamanca Indian Lease Authority; ANTONIO CARBONE, Individually and as Mayor of the City of Salamanca and also as a member of the Salamanca Indian Lease Authority; CITY OF SALAMANCA; PATRICK

CALLAGHAN, Individually and as Chairman of the Salamanca Indian Lease Authority; LINDA RYCHCIK, Individually and as a member of the Salamanca Indian Lease Authority; HENRY STEFANSKI, Individually and as a member of the Salamanca Indian Lease Authority; OWEN K. PHILLIPS, Individually and as a member of the Salamanca Indian Lease Authority; DANN COLVIN, Individually and as a member of the Salamanca Indian Lease Authority; PAUL TAYLOR; PENNY BUCKLEY; SENECA NATION OF INDIANS,

Defendants-Appellees.

DOCKET NO. 91-7086

AFFIDAVIT OF JENNIFER A. COLEMAN

Jennifer A. Coleman, being duly sworn, deposes as follows:

1. I am an attorney duly admitted to practice before this Court and associated with Damon & Morey, attorneys for the plaintiffs-appellants ("plaintiffs"). I submit this affidavit in support of Plaintiffs' Motion Pursuant to F.R. App. P, Rules 2, 8 and 27 for an injunction maintaining the *status quo* while this appeal is *sub judice*.

2. By Decision and Order of Hon. Richard J. Arcara for the United States District Court for the Western District of New York, this action was dismissed against the defendant-appellee, Seneca Nation of Indians ("SNI"). By Decision and Order, entered as a final judgment on January 29, 1991, the District Court found that SNI was immune from suit by virtue of the doctrine of sovereign immunity. Jt. Appendix at 454 and 479. As

a consequence of that decision, the Court dismissed Counts One, Eight and Ten of the Complaint finding SNI was an indispensable party to those claims pursuant to F.R. Civ. P. 19.

3. The plaintiffs filed their Notice of Appeal to this Court immediately. In addition, plaintiffs moved for an expedited appeal and an Order granting the expedited appeal was issued by this Court on February 5, 1991.

4. The effect of the District Court's decision is that plaintiffs may not enforce renewal rights contained in their 99-year leases and also contained in the Acts of 1875 and 1890 because no forum has jurisdiction over SNI.

5. Not only do the 99-year leases expire on February 19, 1991, but an option extended by SNI to the lessees to accept a new lease (referred to as the "40/40" Lease) also expires on February 19, 1991. Jt. Appendix at 26 and 37.

6. SNI revoked the option to accept the "40/40" Lease from the named plaintiffs upon commencement of this lawsuit. Jt. Appendix at 265-266. On February 8, 1991 at approximately 5:15 p.m., letters were telecopied to me by SNI which indicated that SNI decided to restore the plaintiffs' option to accept the "40/40" Lease. The named plaintiffs apparently now have that option until 5:00 p.m. on February 19, 1991. A copy of SNI's letter is attached as Exhibit A.

7. After a period of uncertainty about SNI's plans, SNI announced in the Salamanca Press that it would begin executing the 40/40 Lease on Wednesday, February 13, 1991. The Press announced that persons would be scheduled by street location for a particular day to report and execute the new leases and that *all* leases would be executed on or by February 19, 1991.

8. In the event this Court reserves decision on the appeal following oral argument on February 19th, the plaintiffs request that the Court grant an injunction while it is deciding the appeal so that the lessees' rights are not extinguished before this appeal can be decided.

9. If the Court does not grant an injunction extending the expiration of the 99-year leases and the SNI's option to lessees to accept a new lease, then this appeal could become meaningless before it is decided. The lessees will be placed in the situation where their 99-year leases will expire and they will have to either accept the new lease or forfeit their right to accept that lease while waiting for this Court to decide if they can pursue renewal rights under the 99-year leases.

10. Also, if the 99-year leases expires, the renewal clauses in those leases will similarly expire. Lessees believe that those clauses are effective and important to their asserted right for a renewal.

11. Since the Court agreed to expedite this appeal, plaintiffs presume that the Court would not intend for the appeal to become meaningless while it was *sub judice*.

12. As detailed in the attached Affidavit of Dean R. Kilbourne, approximately 96% of the citizens in the City of Salamanca and the Congressional Villages wish to renew their 99-year leases. Also, 96% of the people in the City of Salamanca and the Congressional Villages do not support the terms of the proposed 40/40 Lease. However, because of SNI's announced lease signing schedule, many lessees are very fearful they will have to make a decision about the 40/40 Lease without knowing whether the 99-year leases are renewable. They also fear their 99-year leases will expire before the Appeal is decided.

13. The plaintiffs have not asked for this relief from the District Court. At the first appearance before the District Court in this matter, Judge Arcara clearly indicated his intention to decide the SNI's motion to dismiss and the question of sovereign immunity before entertaining a class certification motion or any other preliminary motions. Jt. Appendix at 256-257, 267-279.

14. Because the District Court determined it lacks jurisdiction over SNI, it would be powerless to grant the relief sought by this motion.

WHEREFORE, the plaintiffs/appellants request this Court to grant an injunction maintaining the *status quo* and extending the expiration of the 99-year leases and extending the option given by the Seneca Nation to lessees to accept the proposed Lease until this Court renders its decision on the appeal herein.

Dated: Buffalo, New York
February 13, 1991

JENNIFER A. COLEMAN
Jennifer A. Coleman

Sworn to before me this 13th day of February, 1991.

BARBARA A. HADAWABNE
Notary Public
State of New York
Qualified in (Illegible)
My Commission Expires
(Illegible) 30, 1992

Exhibit "A" to Coleman Affidavit

SENECA NATION OF INDIANS

(SEAL)

President; Calvin John
Clerk; Maribel Printup

Treasurer; Dennis Lay

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Tel. 716/945-1790

DATE: Feb. 8, 1991

TRANSMITTING TO TELECOPIER NO.
(716) 856-5510

TO THE ATTENTION OF:
Jennifer Coleman, Esquire

FROM:
Arthur W. Hill

SPECIAL INSTRUCTIONS:
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PLEASE CALL: _____ AT (716) 945-1790 EXT. 124 IF YOU DID NOT RECEIVE 7 PAGES, INCLUDING THIS PAGE.

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THE SENECA NATION OF INDIANS

(SEAL)

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PRESIDENT - *Calvin "Kelly" John, Rt. 417, P.O. Box 213, Steamburg, NY 14783*
CLERK - *Maribel Printup, P.O. Box 533, Salamanca, NY 14779*
TREASURER - *Dennis M. Lay, P.O. Box 26, Mile Block Road, Lawtons, NY 14091*

February 8, 1991

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Joseph Fluent
275 Newton St.
Salamanca, NY 14779

Dear Mr. Fluent:

On September 4, 1990, the Nation offered a new lease to you, conditioned on your showing that you hold a lease which either (1) expires on February 19, 1991, or (2) is among the leases listed in Document One of the Technical Documents to a July 1990 Agreement compromising disputes concerning leases between the Seneca Nation and the City of Salamanca. (This Document One mostly lists 50 years leases which the Nation concluded in the 1970's.)

On November 30, you filed suit against the Nation as a named plaintiff in the Fluent case. Before this case was filed, the Nation had advised you that if you filed litigation against it, the Nation would treat your actions as rejecting our offer of a new lease to you.

The Seneca Nation has carefully reconsidered its treatment of your filing the Fluent case as a rejection of our new lease offer. The Nation does not wish to deprive any lessee of his or her home or business. The Nation entered into the compromise agreement that preceded its new lease offer so as to enable the City of Salamanca and congressional villages to preserve their character as communities, while at the same time ensuring that the Seneca Nation receives fair rental for any future leases it makes. In this regard, I can assure you that the Senca Nation will never again agree to any lease which does not provide athe Nation with a fair rental. The Nation has been in a position of subsidizing non-Indian lessees of its lands for the past century, and it will not permit that situation to continue.

The Nation has decided that these objectives can be furthered consistent with reinstating its offer of a new lease to you and to each of the other named plaintiffs in the Fluent case. I am therefore offering a new lease to you, subject to all the terms and conditions set forth in our September 4, 1990, letter, a copy of which I enclose for your convenience. This offer will remain open until 5:00 p.m. on February 19, 1991. I hope you will choose to accept it.

Sincerely,

CALVIN JOHN
Calvin John
President

cc: Jennifer Coleman, Esquire

APPENDIX G(18-b)

Affidavit of Dean Kilbourne
Dated February 7, 1991

UNITED STATES COURT OF APPEALS
for the SECOND CIRCUIT

JOSEPH FLUENT, Individually and as a representative of the Class of Salamanca Lessees holding 99-year leases from Seneca Nation of Indians; JAMES V. MONGILLO, Individually and as a representative of the class of Salamanca lessees holding 50-year leases from the Seneca Nation of Indians and KEITH MCCLAIN, Individually and as a representative of the class of congressional village lessees holding 99-year leases from the Seneca Nation of Indians; ROBERT ADAMIC, Individually and on behalf of the class of lessees who signed the "40/40 Lease" Tendered by the Seneca Nation of Indians on or about September 4, 1990; MARILYN ADAMIC, Individually and on behalf of the class of lessees who signed the "40/40 Lease" Tendered by the Seneca Nation of Indians on or about September 4, 1990; SALAMANCA COALITION OF UNITED TAXPAYERS, INC., Individually and on behalf of its membership,

Plaintiffs-Appellants,

vs.

SALAMANCA INDIAN LEASE AUTHORITY; DAVID FRANZ, Individually and as Attorney for the City of Salamanca Indian Lease Authority; ANTONIO CARBONE, Individually and as Mayor of the City of Salamanca and also as a member of the Salamanca Indian Lease Authority; CITY OF SALAMANCA; PATRICK CALLAGHAN, Individually and as Chairman of the

Salamanca Indian Lease Authority; LINDA RYCHCIK, Individually and as a member of the Salamanca Indian Lease Authority; HENRY STEFANSKI, Individually and as a member of the Salamanca Indian Lease Authority; OWEN K. PHILLIPS, Individually and as a member of the Salamanca Indian Lease Authority; DANN COLVIN, Individually and as a member of the Salamanca Indian Lease Authority; PAUL TAYLOR; PENNY BUCKLEY; SENECA NATION OF INDIANS,

Defendants-Appellees.

DOCKET NO. 91-7086

AFFIDAVIT OF DEAN R. KILBOURNE

COUNTY OF CATTARAUGUS)
ss.:
STATE OF NEW YORK)

Dean R. Kilbourne duly sworn deposes as follows:

1. I am a resident in the City of Salamanca and a lessee of the defendant/appellee Seneca Nation of Indians (hereinafter "Seneca Nation"). I am the owner of a business known as American Form Tech. Inc. ("AFT") which is located at 111 Summit Street, Salamanca, New York. AFT is on property owned by the Seneca Nation which I occupy pursuant to three 99-year leases from the Seneca Nation.

2. I submit this Affidavit in support of plaintiffs'/appellants' (hereinafter "plaintiffs") motion to the Court pursuant to F.R. App. P., Rules 8 and 27, for an injunction maintaining the *status quo* with respect to the lease situation at issue in this action until such time as this Court renders its decision on the appeal in this case.

3. I have been very interested and concerned about the lease situation in Salamanca for a number of years. It has been virtually impossible to obtain business financing or home mortgages in this city for approximately the last fifteen to twenty years. The banks have been unwilling to lend when the collateral securing the loan is property subject to Indian leases which expire on February 19, 1991.

4. Like other lessees in the City of Salamanca, I received a copy of my proposed lease, known as the 40/40 Lease (hereinafter referred to as the "40/40 Lease") on or about September 4, 1990. I have reviewed that proposed lease myself and with counsel and I am of the opinion that banks will not necesarily be inclined to lend on those leases. As I see it, one of the major problems with the 40/40 Lease is that it is entirely unenforceable against the Seneca Nation in any Court of law. The Nation identifies itself in the Lease as a "Sovereign" Nation. I understand that the Nation has already taken the position in this lawsuit that it is immune from suit to enforce the Agreement signed in July, 1990, between the Seneca Nation and the City ("Agreement"). The 40/40 Lease was offered pursuant to that Agreement. Therefore, not only banks, but myself as an independent lesse seeking some reliable and enforceable property interest for my business, feel very insecure since the Seneca Nation could simply decide not to honor the 40/40 Lease at any time and I would have no judicial recourse.

5. Because of my concerns about the 40/40 Lease, I and other concerned lessees petitioned our Common Council to permit us to use the city voting machines to take a poll/referendum on the lease issue. I understood at the time of my request that the poll would be non-binding; however, I felt it was important to determine in some reliable way the opinion of all lessees regarding the proposed lease.

6. Also, I have been aware of the litigation commenced by various lessees, including the Salamanca Coalition of United Taxpayers ("SCOUT"), which seeks to enforce the renewal clauses in the 99-year leases and in the Acts of 1875 and 1890. I know that there has been much criticism of this litigation effort by City representatives, many of whom are named as defendants in this action. I understand that they represented to the District Court that the Salamanca Indian Lease Authority ("SILA") represented approximately 2,000 lessees who SILA declared wanted to accept the 40/40 Lease.

7. I felt that the representations of SILA regarding the number of people in this community who liked the 40/40 Lease and wanted to accept it was inaccurate. Because of that, and the felt need to determine reliably what the views of the citizens here were on the 40/40 Lease and on the subject of the pending litigation, I felt compelled to pursue the poll matter notwithstanding that the City refused to allow its citizens to use the city voting booths.

8. At my own expense, I arranged for a poll to be taken in Salamanca on the lease issue. Although I am a member of the SCOUT organization, I prepared for and conducted the poll entirely independent of the SCOUT Board of Directors and the SCOUT leadership.

9. I determined that the best way to conduct the poll was to permit all citizens in the City of Salamanca, and in the Congressional Villages, over the age of 18, to vote.

10. I arranged for volunteers to assist me who were each authorized election officials for Cattaraugus County. The County was not involved in this poll however; and the volunteers were not paid for their services.

11. Because the City had denied us the use of the voting machines, we constructed our own "privacy booths" from cardboard cartons. On February 2, 1991, we set up the "voting booths" at a local shopping plaza. The polls were open from 9:00 a.m.-6:00 p.m.; a total of 1,111 people came and cast their ballots.

12. We did a breakdown of the 1,111 voters. Of that number, 754 identified themselves as leaseholders, 110 said they were not leaseholders and 247 voters did not indicate their status.

13. Persons who came to vote signed-in on the same standard registered voter forms used for county elections. Each voter had to show identification to prove age and residency. Using the SCOUT membership list, we identified those voters who were *not* members of SCOUT. There were 611 voters who were not SCOUT members. I and my assistants then compared the list of lessees which the City uses for tax purposes against the non-SCOUT voter list. Of the non-SCOUT voters, 334 were leaseholders. The number of leases held by the non-SCOUT leaseholders was 336. When those leases were added to the number of leases held by SCOUT members (821 as reported by SCOUT's President Joseph Fluent) the total number of leases represented in the vote and by SCOUT is 1,157.

14. As a point of information, in the last Presidential election there were 2,498 votes cast. Of course, the draw of a Presidential election (with its months of promotion) could reasonably be expected to induce a larger turnout. However, I was tremendously impressed and surprised by the large voter turnout for our poll, especially since the Salamanca Press, our local newspaper, had written an editorial the day before the voting telling people that it was not worth their time to go out and vote.

15. The voters were asked to respond to five questions:

> Question 1. Would you prefer to renew the 99-year lease?
>
> Question 2. Do you agree with the legal efforts underway to secure a renewal of the 99-year lease?
>
> Question 3. Do you think the City should negotiate a renewal of the 99-year lease under the Acts of 1875 and 1890?
>
> Question 4. Do you believe the proposed 40/40 Lease is affordable?
>
> Question 5. Do you support the terms of the proposed 40/40 Lease?

16. To summarize the results: 96% of the people want to renew their 99-year leases; 91% of the people agreed with the legal efforts underway to secure a renewal of the 99-years leases; 95% of the people believe the City should negotiate a renewal of the 99-year leases under the Acts of 1875 and 1890; 91% of the people do not believe that the proposed 40/40 Lease is affordable and 96% of the people do not support the terms of the proposed 40/40 Lease. A complete breakdown of the results is set forth in Attachment A to this Affidavit.

17. With numbers like this I simply cannot believe that SILA has represented, and apparently continues to represent, that the majority of lessees in this City support the 40/40 Lease and want to accept its terms.

Dated: Salamanca, New York
February 7, 1991

DEAN R. KILBOURNE
Dean R. Kilbourne

Sworn to before me this 7th day of February, 1991.

JENNIFER A. COLEMAN
Notary Public

JENNIFER A. COLEMAN
Notary Public
State of New York
Qualified in Erie County
My Commission Expires
April 14, 1991

Exhibit "A" to Kilbourne Affidavit

SURVEY TOTALS ON QUESTIONS 1 THRU 5

TOTAL

NUMBER OF CITY RESIDENT BALLOTS 1050

NUMBER OF OTHER PARTIES BALLOTS [redacted]

THE TOTAL NUMBER OF BALLOTS CAST 1111

QUESTION #1

TOTAL # ANSWERS YES	1069
TOTAL # ANSWERS NO	30
TOTAL # NOT ANSWERED	12

QUESTION #2

TOTAL # ANSWERS YES	1009
TOTAL # ANSWERS NO	95
TOTAL # NOT ANSWERED	8

QUESTION #3

TOTAL # ANSWERS YES	1056
TOTAL # ANSWERS NO	42
TOTAL # NOT ANSWERED	13

QUESTION #4

TOTAL # ANSWERS YES	76
TOTAL # ANSWERS NO	1016
TOTAL # NOT ANSWERED	19

QUESTION #5

TOTAL # ANSWERS YES	42
TOTAL # ANSWERS NO	1062
TOTAL # NOT ANSWERED	7

REGISTERD VOTERS

853	LISTED AS REGISTERED VOTERS
68	LISTED AS NON-REGISTERED VOTERS
190	DID NOT INDICATE

LEASEHOLDERS

754	LISTED AS A LEASEHOLDER
110	LISTED AS A NON-LEASEHOLDER
247	DID NOT INDICATE

SURVEY TOTALS ON QUESTIONS 1 THRU 5

WARD #1

NUMBER OF CITY RESIDENT BALLOTS 147

NUMBER OF OTHER PARTIES BALLOTS 0

THE TOTAL NUMBER OF BALLOTS CAST 147

QUESTION #1

TOTAL # ANSWERS YES	145
TOTAL # ANSWERS NO	1
TOTAL # NOT ANSWERED	1

QUESTION #2

TOTAL # ANSWERS YES	131
TOTAL # ANSWERS NO	16
TOTAL # NOT ANSWERED	0

QUESTION #3

TOTAL # ANSWERS YES	140
TOTAL # ANSWERS NO	5
TOTAL # NOT ANSWERED	2

QUESTION #4

TOTAL # ANSWERS YES	7
TOTAL # ANSWERS NO	138
TOTAL # NOT ANSWERED	2

QUESTION #5

TOTAL # ANSWERS YES	6
TOTAL # ANSWERS NO	140
TOTAL # NOT ANSWERED	1

REGISTERD VOTERS

102	LISTED AS REGISTERED VOTERS
11	LISTED AS NON-REGISTERED VOTERS
34	DID NOT INDICATE

LEASEHOLDERS

88	LISTED AS A LEASEHOLDER
14	LISTED AS A NON-LEASEHOLDER
45	DID NOT INDICATE

SURVEY TOTALS ON QUESTIONS 1 THRU 5

WARD #2

NUMBER OF CITY RESIDENT BALLOTS 323

NUMBER OF OTHER PARTIES BALLOTS 3

THE TOTAL NUMBER OF BALLOTS CAST 326

QUESTION #1

TOTAL # ANSWERS YES	307
TOTAL # ANSWERS NO	14
TOTAL # NOT ANSWERED	5

QUESTION #2

TOTAL # ANSWERS YES	286
TOTAL # ANSWERS NO	35
TOTAL # NOT ANSWERED	5

QUESTION #3

TOTAL # ANSWERS YES	304
TOTAL # ANSWERS NO	16
TOTAL # NOT ANSWERED	6

QUESTION #4

TOTAL # ANSWERS YES	38
TOTAL # ANSWERS NO	281
TOTAL # NOT ANSWERED	7

QUESTION #5

TOTAL # ANSWERS YES	21
TOTAL # ANSWERS NO	300
TOTAL # NOT ANSWERED	5

REGISTERD VOTERS

279	LISTED AS REGISTERED VOTERS
17	LISTED AS NON-REGISTERED VOTERS
30	DID NOT INDICATE

LEASEHOLDERS

242	LISTED AS A LEASEHOLDER
29	LISTED AS A NON-LEASEHOLDER
55	DID NOT INDICATE

SURVEY TOTALS ON QUESTIONS 1 THRU 5

WARD #3

NUMBER OF CITY RESIDENT BALLOTS 181

NUMBER OF OTHER PARTIES BALLOTS 0

THE TOTAL NUMBER OF BALLOTS CAST 181

QUESTION #1

TOTAL # ANSWERS YES	173
TOTAL # ANSWERS NO	6
TOTAL # NOT ANSWERED	2

QUESTION #2

TOTAL # ANSWERS YES	171
TOTAL # ANSWERS NO	10
TOTAL # NOT ANSWERED	0

QUESTION #3

TOTAL # ANSWERS YES	173
TOTAL # ANSWERS NO	8
TOTAL # NOT ANSWERED	0

QUESTION #4

TOTAL # ANSWERS YES	10
TOTAL # ANSWERS NO	168
TOTAL # NOT ANSWERED	3

QUESTION #5

TOTAL # ANSWERS YES	4
TOTAL # ANSWERS NO	177
TOTAL # NOT ANSWERED	0

REGISTERD VOTERS

162	LISTED AS REGISTERED VOTERS
12	LISTED AS NON-REGISTERED VOTERS
7	DID NOT INDICATE

LEASEHOLDERS

142	LISTED AS A LEASEHOLDER
22	LISTED AS A NON-LEASEHOLDER
17	DID NOT INDICATE

SURVEY TOTALS ON QUESTIONS 1 THRU 5

WARD #4

NUMBER OF CITY RESIDENT BALLOTS 233

NUMBER OF OTHER PARTIES BALLOTS 0

THE TOTAL NUMBER OF BALLOTS CAST 233

QUESTION #1

TOTAL # ANSWERS YES	227
TOTAL # ANSWERS NO	4
TOTAL # NOT ANSWERED	2

QUESTION #2

TOTAL # ANSWERS YES	242
TOTAL # ANSWERS NO	19
TOTAL # NOT ANSWERED	2

QUESTION #3

TOTAL # ANSWERS YES	226
TOTAL # ANSWERS NO	4
TOTAL # NOT ANSWERED	3

QUESTION #4

TOTAL # ANSWERS YES	10
TOTAL # ANSWERS NO	219
TOTAL # NOT ANSWERED	4

QUESTION #5

TOTAL # ANSWERS YES	4
TOTAL # ANSWERS NO	229
TOTAL # NOT ANSWERED	0

REGISTERD VOTERS

163	LISTED AS REGISTERED VOTERS
15	LISTED AS NON-REGISTERED VOTERS
55	DID NOT INDICATE

LEASEHOLDERS

148	LISTED AS A LEASEHOLDER
15	LISTED AS A NON-LEASEHOLDER
70	DID NOT INDICATE

SURVEY TOTALS ON QUESTIONS 1 THRU 5

WARD #5

NUMBER OF CITY RESIDENT BALLOTS 166

NUMBER OF OTHER PARTIES BALLOTS 0

THE TOTAL NUMBER OF BALLOTS CAST 166

QUESTION #1

TOTAL # ANSWERS YES	160
TOTAL # ANSWERS NO	4
TOTAL # NOT ANSWERED	2

QUESTION #2

TOTAL # ANSWERS YES	151
TOTAL # ANSWERS NO	14
TOTAL # NOT ANSWERED	1

QUESTION #3

TOTAL # ANSWERS YES	157
TOTAL # ANSWERS NO	7
TOTAL # NOT ANSWERED	2

QUESTION #4

TOTAL # ANSWERS YES	11
TOTAL # ANSWERS NO	152
TOTAL # NOT ANSWERED	3

QUESTION #5

TOTAL # ANSWERS YES	6
TOTAL # ANSWERS NO	159
TOTAL # NOT ANSWERED	1

REGISTERD VOTERS

115	LISTED AS REGISTERED VOTERS
7	LISTED AS NON-REGISTERED VOTERS
44	DID NOT INDICATE

LEASEHOLDERS

93	LISTED AS A LEASEHOLDER
27	LISTED AS A NON-LEASEHOLDER
46	DID NOT INDICATE

SURVEY TOTALS ON QUESTIONS 1 THRU 5

SURVEY TOTALS ON QUESTIONS 1 THRU 5

CONG. & OTHER

NUMBER OF CITY RESIDENT BALLOTS 0

NUMBER OF OTHER PARTIES BALLOTS 58

THE TOTAL NUMBER OF BALLOTS CAST 58

QUESTION #1

TOTAL # ANSWERS YES	57
TOTAL # ANSWERS NO	1
TOTAL # NOT ANSWERED	0

QUESTION #2

TOTAL # ANSWERS YES	57
TOTAL # ANSWERS NO	1
TOTAL # NOT ANSWERED	0

QUESTION #3

TOTAL # ANSWERS YES	56
TOTAL # ANSWERS NO	2
TOTAL # NOT ANSWERED	0

QUESTION #4

TOTAL # ANSWERS YES	0
TOTAL # ANSWERS NO	58
TOTAL # NOT ANSWERED	0

QUESTION #5

TOTAL # ANSWERS YES	1
TOTAL # ANSWERS NO	57
TOTAL # NOT ANSWERED	0

REGISTERD VOTERS

32	LISTED AS REGISTERED VOTERS
6	LISTED AS NON-REGISTERED VOTERS
20	DID NOT INDICATE

LEASEHOLDERS

41	LISTED AS A LEASEHOLDER
3	LISTED AS A NON-LEASEHOLDER
14	DID NOT INDICATE

3 Untabed Ballots

APPENDIX H(1)

ARTICLE I §8

Section 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

* * *

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

ARTICLE VI

* * *

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

AMENDMENT V

No person shall . . . be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

ARTICLE XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

12 USC §1709(q)

(q) Insurance of mortgages secured by property on certain lands leased by Seneca Nation of New York Indians

(1) Notwithstanding any other provision of this section or any other section of this subchapter, the Secretary shall insure and commit to insure, under subsection (b) of this section as modified by this subsection, any mortgage secured by property located on land that—

(A) is within the Allegany Reservation of the Seneca Nation of New York Indians; and

(B) is subject to a lease entered into for a term of 99 years pursuant to the Act of February 19, 1875 (Chapter 90; 18 Stat. 330) and the Act of September 30, 1890 (Chapter 1132; 26 Stat. 558).

(2) A mortgage shall be eligible for insurance under subsection (b) of this section as modified by this subsection without regard to limitations in this subchapter relating to marketability of title or any other statutory restriction that the Secretary determines is contrary to the purpose of this subsection.

(3) The Secretary, in connection with any mortgage insured under subsection (b) of this section as modified by this subsection, shall have all statutory powers, authority, and responsibilities that the Secretary has with respect to other mortgages insured under subsection (b) of this section, except that the Secretary may modify such powers, authority, or responsibilities if the Secretary determines such action to be necessary because of the special nature of the mortgage involved.

Rule 19. Joinder of Persons Needed for Just Adjudication

(a) **Persons to be Joined if Feasible.** A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and joinder of that party would render the venue of the action improper, that party shall be dismissed from the action.

(b) Determination by Court Whenever Joinder not Feasible. If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

NY INDIAN LAW

§46. Peacemakers' courts

The peacemakers for each of the three reservations, the Allegany, the Cattaraugus and the Tonawanda reservations, shall respectively constitute the peacemakers' courts thereof, and the eldest peacemaker of each of such courts shall be the presiding officer thereof. Any two of the peacemakers of any reservation shall be competent to perform any of the duties or exercise any of the powers assigned to the peacemakers of such reservation. The peacemakers' court of each such reservation shall have authority to hear and determine all matters, disputes and controversies between any Indians residing upon such reservation, whether arising upon contracts or for wrongs, and particularly for any encroachments or trespass on any land cultivated or occupied by any one of them, and which shall have been entered and described in the clerk's books of records; but they shall not take cognizance of any claim founded upon any debt or demand originally contracted with a non-Indian.

24 CFR §203.43j

§203.43j Eligibility of mortgages on Allegany Reservation of Seneca Nation of Indians.

A mortgage on a leasehold estate covering a one- to four-family residence located on the Allegany Reservation of the Seneca Nation of Indians in the State of New York is eligible for insurance if the mortgage meets the requirements of this subpart as modified by this section.

(a) *Title.* This section applies only to a mortgage which:

(1) Does not meet the requirements of §203.37;

(2) Is on a leasehold under a lease with a termination date in February 1991, which provides for renewal in accordance with the Act of February 19, 1875 (18 Stat. 330) and the Act of September 30, 1890 (26 Stat. 558).

A mortgage may not be on a leasehold created by a lease which is executed after the effective date of this section as a renewal or replacement of a lease described in paragraph (a)(2) of this section. A mortgage may not be secured by any other right of occupancy created in lieu of a leasehold after the effective date of this section by agreement of the Seneca Nation, court order, law or any other means.

(b) *Provisions of mortgage.* The Secretary will prescribe special mortgage provisions in the form of a mortgage rider in order better to secure the mortgagee, including:

(1) Authorization for the mortgagee to exercise the option of lease renewal if the mortgagor fails to do so, and to recover from the mortgagor authorized expenses incurred to obtain lease renewal; and

(2) Making a mortgagor failure to take steps necessary for lesś renewal an event of default under the mortgage.

(c) *Secretary agreement with mortgagor.* The mortgagor must enter into an agreement with the Secretary and such other parties as the Secretary may require regarding actions to be taken to obtain either a renewal of the lease or a new lease.

(3)

No. 90-1889

FILED
JUN 21 1991
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

October Term, 1990

JOSEPH FLUENT, Individually and as a representative of the Class of Salamanca Lessees holding 99-year leases from Seneca Nation of Indians; JAMES V. MONGILLO, Individually and as a representative of the class of Salamanca lessees holding 50-year leases from the Seneca Nation of Indians and KEITH MCCLAIN, Individually and as a representative of the class of congressional village lessees holding 99-year leases from the Seneca Nation of Indians; ROBERT ADAMIC, Individually and on behalf of the class of lessees who signed the "40/40 Lease" Tendered by the Seneca Nation of Indians on or about September 4, 1990; MARILYN ADAMIC, Individually and on behalf of the class of lessees who signed the "40/40 Lease" Tendered by the Seneca Nation of Indians on or about September 4, 1990; SALAMANCA COALITION OF UNITED TAXPAYERS, INC., Individually and on behalf of its membership,

Petitioners,

vs.

SALAMANCA INDIAN LEASE AUTHORITY; DAVID FRANZ, Individually and as Attorney for the City of Salamanca Indian Lease Authority; ANTONIO CARBONE, Individually and as Mayor of the

Respondents.

(Additional Respondents continued inside Front Cover.)

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR RESPONDENTS OTHER THAN THE SENECA NATION OF INDIANS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Attorney for Respondents Other Than the Seneca Nation of Indians

Of Counsel:
DAVID M. FRANZ

Batavia Times Publishing Co.
Batavia, New York (716) 344-2000

(Additional Respondents.)

City of Salamanca and also as member of the Salamanca Indian Lease Authority; CITY OF SALAMANCA; PATRICK CALLAGHAN, Individually and as Chairman of the Salamanca Indian Lease Authority; LINDA RYCHCIK, Individually and as member of the Salamanca Indian Lease Authority; HENRY STEFANSKI, Individually and as a member of the Salamanca Indian Lease Authority; OWEN K. PHILLIPS, Individually and as a member of the Salamanca Indian Lease Authority; DANN COLVIN, Individually and as a member of the Salamanca Indian Lease Authority; PAUL TAYLOR; PENNY BUCKLEY; SENECA NATION OF INDIANS,

Respondents.

QUESTIONS PRESENTED

1. Does the Act of 1875, which is silent on the subject of sovereign immunity, provide for waiver of sovereign immunity of the Seneca Nation?

2. Does the Act of 1875 provide for perpetual lease renewals when the Act does not so state *in haec verba*?

3. Does the Rule 19 dismissal of count 10, based on the doctrine of sovereign immunity, deprive petitioners of constitutional rights?

PARTIES TO THE PROCEEDING

Pursuant to Supreme Court Rule 29.1, all parties to the proceeding are listed in the caption.

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IN THE

Supreme Court of the United States

October Term, 1990

No. 90-1889

JOSEPH FLUENT, *et al.*,

Petitioners,

vs.

SALAMANCA INDIAN LEASE AUTHORITY, *et al.*,

Respondents.

BRIEF FOR RESPONDENTS OTHER THAN THE SENECA NATION OF INDIANS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

PRELIMINARY STATEMENT

This Court, on February 26, 1991, again held that Indian Tribes are immune from suit in the absence of an unequivocal expression of waiver of immunity by Congress. *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe*, 498 U.S. _____, 111 S. Ct. 905 (1991); *cf. Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978), and cases cited therein. No reason has been advanced in this petition why this Court should hear this case because the applicable principles of law are well established and recently confirmed by this Court. A resort to legislative history cannot furnish evidence of waiver as claimed by petitioners. The waiver must be "unequivocally expressed." *United States v. Testan*, 424 U.S. 392, 399 (1976) (quoting *United States v. King*, 395 U.S. 1, 4 (1969)).

The issues sought to be raised in this petition have been fully considered by the Congress of the United States (the "Congress"). As early as November 7, 1985, testimony was taken before the House Committee on Interior and Insular Affairs concerning the leases, which were to expire some five years hence. Hearings were held in the House and Senate in 1990. Congress' response was the Seneca Nation Settlement Act of 1990 which required the parties to negotiate the terms and conditions of a new lease agreement among themselves. Pub. L. No. 101-503, 104 Stat. 1292 (See Appendix 6ra-17ra). The Act also provided Federal and State funds to compensate the Seneca Nation (the "Nation") for lost revenues over past years occasioned by unconscionably low rents under leases of a "kind that may shock even a calloused conscience." *United States v. Forness,* 125 F.2d 928, 947 (2d Cir. 1942). Congress made no mention in the 1990 Act of renewability of leases. In fact, the leases in question have been renewed twice pursuant to the Congressional Act of 1875. 18 Stat. 330 (Appendix 1ra-4ra); once in 1880 and again in 1892. The second renewal in 1892 was for a term of 99 years, which was provided by an Act of Congress passed in 1890. Act of 1890, 26 Stat. 558 (5ra). The United States Court of Appeals for the Second Circuit, which had before it the relevant statutes and the legislative history on the issue, specifically found that the lessees did not have a right of renewal as claimed by the petitioners. *Fluent v. Salamanca Indian Lease Authority,* 928 F.2d 542 (2d Cir. 1991) (1a-14a).

The holding of the courts below that the Seneca Nation is immune from suit is, in all respects, correct; the claim by the petitioners that their leases are renewable under the statute of 1875 is factually wrong. For these reasons, the petition for writ of certiorari should be denied.

STATEMENT OF CASE

In the mid-nineteenth century neither tribes of Indians nor individual Indians had authority to lease Indian lands, and non-Indians were prohibited from leasing Indian lands.[1] Nevertheless, operating upon the assumption that the State of New York could sanction such leasing of lands individual Indians possessed of allotted lands and the Seneca Nation of Indians leased lands on the Allegany Reservation of the Seneca Nation of Indians to non-Indians including railroads constructed through the Allegany Indian Reservation.[2]

As a result of both geographical factors and historical accident, the railroads expanding both east and west and north and south intersected in a place which has come to be known as the City of Salamanca. Most of the City lies within the Allegany Reservation of the Seneca Nation of Indians. Railroad operators and white settlers negotiated with both the Seneca Nation and individual Indians and subsequently entered into lease agreements for land on the reservation which runs a distance of approximately 40 miles along the shore of the Allegheny River.

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[1] The first version of the Nonintercourse Act was passed under the title of "An act to regulate the trade and intercourse with the Indian Tribes." Act of July 22, 1790, Ch. 33, §4, 1 Stat. 137 (current version at 25 U.S.C. §177 (1976)). The 1790 version provides:

> Sec. 4 . . . That no sale of lands made by any Indians or any nation or tribe of Indians within the United States, shall be valid to any person or persons, or to any state, whether having the right of pre-emption to such lands or not, unless the same shall be made and duly executed at some public treaty, held under the authority of the United States.

By a later version of the Act, June 30th, 1834, §12, 4 Stat. 729, 730 the prohibition was extended to "no lease . . . or of any title thereto . . . ." The Nation was granted authority to lease the lands at issue under the 1875 Act. (1ra-4ra).

[2] House of Representatives Miscellaneous Document No. 75, January 29th, 1875, reciting: "Whereas the legislature of the State of New York has at different times ratified and confirmed leases between Indian and white settlers on the Allegany Reservation in said state . . . "

Prior to February, 1875, a New York Supreme Court decision voided all such leases as being beyond state authority and recognized the plenary authority of Congress in the matter of the transfer of Indian reservation lands.

The unauthorized leases issued in the 1850's covered lands in the then Villages of Salamanca, New York, and West Salamanca (later merged into the City of Salamanca) as well as surrounding areas later identified as the congressional villages of Great Valley, Red House, Carrollton and Vandalia.

The lessees had significantly improved the Indian lands with railroads, schools, bridges, homes, businesses and all improvements normally associated with established communities.

Congress was called upon to provide a resolution to the situation and did so by enacting the act of February 19, 1875, ch. 90, 18 Stat. 330, "An act to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany Reservations, and to confirm existing leases."[3]

The objective of the congressional legislation was to prevent the eviction of the non-Indians who had effected significant improvements on the Indian land, authorize the Nation to lease lands within both Cattaraugus and Allegany reservations, to railroads, and to lease lands within the Allegany reservation in areas defined by a survey directed to be made by said act of 1875 and designated congressional villages. The existing, unauthorized leases were ratified and confirmed.

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[3] For the convenience of the Court the Act of February 19, 1875 is in the appendix to this brief at 1ra to 4ra.

Petitioners are a group of residents and property possessors in the City of Salamanca who are unhappy with the terms of a compromised lease agreement offered as a replacement to a 99-year lease which expired on February 19, 1991. Dissatisfied with the lease terms, the petitioners, instead of seeking to negotiate further with the Seneca Nation, insisted that they had the right to renew for a period of 99 years and the attendant benefits of arbitration. (553a-559a, 560a-565a, 566a-575a). The Seneca Nation refused. (560a-565a). The petitioners brought suit against the Nation, the Salamanca Indian Lease Authority and its individual members.

The Act of 1875 (18 Stat. 330 (1ra-4ra)) also provided that where a non-Indian was a lessee and made land improvements, the lease was renewable for a period of 12 years with a further renewal period for 12 years. In 1892, the second renewal provided for in the 1875 Act was exercised. However, by the Act of 1890, the second renewal period was changed from 12 years to a period of 99 years. 26 Stat. 558 (5ra). It is the leases ratified in the 1875 Act, renewed in 1880 for a period of 12 years, and renewed in 1892 for a period of 99 years, with which we are mainly concerned in this litigation.[4]

Congress has been attentive to the developing lease situation in Salamanca. Hearings were held before Senate and House Committees regarding the problems created on expiration of the leases including sessions held in 1985 and 1990. Informed by the hearings, Congress passed the Seneca Nation Settlement Act of 1990. Pub. L. No. 101-503, 104 Stat. 1292 (6ra-17ra). The Act of 1990 provided that the Nation and the lessees were to

[4] Other leases commonly referred to as Forness leases were signed in the 1940's after the lessees had defaulted on the rent payments. *See United States v. Forness*, 125 F.2d 928 (2d Cir. 1942). Other leases were entered into in the 1980's and provide for terms of fifty years.

work out among themselves the terms of any new lease agreement. In addition, because the original leases called for nominal annual rent payments of $.50 or $1.00 per year, the Act also provided money to compensate the Seneca Nation for the inequitable rents received for the property over the past 115 years. Congress specifically avoided stating what the result of the negotiations should be preferring that the parties negotiate among themselves.

The Salamanca Indian Lease Authority (the "Authority) was created by New York State statute in 1969. The Authority began negotiating with the Seneca Nation soon thereafter. Negotiations did not run smoothly. Serious differences arose between the parties concerning the right of renewal, value of the property, fair rents, and the value of improvements. More recently, the Authority obtained written authorizations from all but a few of the lessees to represent the lessees in these negotiations. A proposed lease package was arrived at and the Authority recommended that the City of Salamanca report the status of negotiations to Congress. The Authority and the City, however, left it to the individual lessees whether they wished to enter into a new lease under such terms as offered by the Seneca Nation.[5]

The lease agreement generally provided for a lease period of 40 years with a clear and unencumbered right to renew for 40 years upon the condition that all rent payments have been made. It also provided for increased rental payments; the annual rent increasing from what was $.50 to a $1.00 to approximately $150.00 to $200.00

[5] The petition states that the Lease Authority "agree[d] to the 40/40 lease apparently on behalf of the lessees" (Petition at p. 9 n.7); this is not so. Both the City and the Lease Authority thought the lease agreement was the most favorable the Nation would grant but the decision to enter into the lease was left to the lease holders.

per year per lease. The parties to the lease agreement reserved all rights under the Act of 1875 and all rights to renew if any existed.

The Seneca Nation moved to dismiss in the District Court on the grounds of sovereign immunity. The District Court agreed and dismissed the case as to the Nation. *Fluent v. Salamanca Indian Lease Authority,* No. 90 Civ. 1229A (W.D.N.Y. January 25, 1991) (49a-65a). The Court also dismissed related counts of the complaint as to which the Nation was an indispensable party under Rule 19. Fed. R. Civ. P. 19. The Second Circuit affirmed on the ground that the Act of 1875 did not specifically provide for waiver of sovereign immunity. *Fluent v. Salamanca Indian Lease Authority,* 928 F.2d 542 (2d Cir. 1991) (1a-14a). The Court went on to articulate that in the absence of an unequivocal legislative intent to waive sovereign immunity, the Nation was immune from suit. Moreover, the Second Circuit examined the relevant statutes and legislative history, including the Act of 1875 and the Act of 1890, to determine if the petitioners had a right to renew. (10a-11a). The Court found that there was no right to renew and that the leases already had been renewed on two occasions, thus fulfilling the terms of the Act of 1875. (10a). The petitioners sought to stay the mandate in the Second Circuit and their motion was denied. The petitioners also sought to stay the mandate in this Court and that application was denied by an individual justice and then by the full Court. *Fluent v. Salamanca Indian Lease Authority,* 57 U.S.L.W. 3741 (U.S. April 29, 1991).

REASONS FOR DENYING THE WRIT

(a) The decision below was correct

This petition raises no issue on which there could be any serious doubt. The sovereign immunity of the Seneca Nation is beyond question.[6] This Court has consistently held that the waiver of sovereign immunity must be clearly and unequivocally expressed in the language of the statute itself in order to be effective. Attempts by the petitioners to quote snippets of statements made by those who were uninformed about the proposed legislation or against the legislation are futile. The language in section 7 of the 1875 Act, which gives the Nation the right to sue to enforce the lease, is insufficient to provide the unequivocal expression of waiver.[7] This Court has repeatedly held that an

[6] We leave to the Seneca Nation of Indians to fully set forth in their brief in opposition the correctness of the ruling on sovereign immunity. Suffice it to say for our purposes that the doctrine was fully examined by this Court in *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978). This Court's most recent approval of the doctrine is found in *Potouatomi*, which also includes the proposition that clear congressional abrogation is required. 498 U.S. _____, 111 S. Ct. 905 (1991).

[7] Petitioner seeks to make much of section 7 of the Act of 1875 arguing that because it provides for access to courts, it should be construed as a congressional waiver of sovereign immunity. The language of section 7 ties rent recovery with the recovery of possession. Only a lessor would seek to recover possession or rent. The statutes states that the circuit and district courts "[s]hall have jurisdiction of all actions for the recovery of rents and for the recovery of possession of real property. . . ." The additional actions referred to in this section are also actions typically commenced by a lessor, such as debt, ejectment, forcible entry, detainer and unlawful detainer. It is not surprising that Congress provided the Seneca Nation with definite and explicit access to courts to recover their land. Indians in the State of New York could not bring an action in the courts of New York until 1892. *Seneca Nation of Indians v. Appleby*, 195 N.Y. 318 (1902). In the main, petitioner's quotes are those which follow the expression of a need for a forum for the Indian, not a forum for the non-Indian.

unequivocal expression of such a waiver is required to establish that Congress has waived the sovereign immunity of an Indian tribe.

(b) Petitioners are not entitled to successive renewals

Petitioners are simply wrong concerning their claim that they are entitled to successive renewals under the Act of 1875.[8] The Second Circuit had before it the applicable statutes and legislative history on the subject and carefully examined the issue. It found:

> that the renewal provisions of 1875 Act applied only to the original renewals and do not extend to the present renewals. Section 3 of the 1875 Act validated leases existing at that time for a five-year term and authorized the term of renewal "not exceeding twelve years." The 1875 Act also provided that "whenever any lease shall expire after its renewal . . ., it may, at the option of the lessee, his heirs or assigns, be renewed in the manner hereinbefore provided." The 1890 Act amended the 1875 Act to allow renewal for "a term not exceeding ninety-nine years, instead of the term of 12 years." Thus the leases that expired on February 19, 1991 are leases that previously were renewed a second time for a term of 99 years. The 1875 Act does not

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[8] It is disingenuous for the petitioners to proclaim, as they do at page 6 of the petition, that "Each 99-year lease expressly provides for a renewal term up to 99 years upon expiration on February 19, 1991."

The lease provides "[a]lso to quit and deliver up to the party of the first part said land and premises at the expiration of said term, unless he shall procure this lease to be renewed in the manner provided by said Acts of Congress." (453a).

The Act of 1875 in section 3 provides for two renewals; one occurred in 1880 (for a period of twelve years) and one for an additional period of up to 12 years. The Act of 1890 changed the 12 year period to 99 years; thus, all rights to renew provided in the Act of 1875 have been exercised.

> authorize a perpetual renewal, and without clear language to that effect, we will not construe the statute to confer such a right. See *Winslow v. Baltimore and Ohio R.R. Co.*, 188 U.S. 646, 654-55, 23, S. Ct. 443, 446, 47 L.Ed. 635 (1903) (plain language necessary to establish intent to provide right of perpetual renewal); *McLean v. United States*, 316 F. Supp. 827, 829 (E.D. Va. 1970) ("[t]he intent to create a perpetual lease must appear in clear and unequivocal language"); *McMillian v. Malvern Gravel Co.*, 136 F. Supp. 567, 574 (W.D.Ark. 1955) (same); 50 Am.Jur.2d *Landlord and Tenant*, §1171 (1970).
>
> 928 F.2d at 546-7 (10a-11a).

(c) Congress has spoken on the question

The Act of Congress of 1990 provided that the parties were to negotiate their differences and come up with a new lease. Congress had before it the provisions of the lease agreement tentatively arrived at and supported the agreement ("to effectuate and support the Agreement . . . and facilitate the negotiation of new leases . . ." Section 2(b)(1) (See Appendix to this brief at 8ra)). Congress provided for payments to the Seneca Nation to make up for the shortfall in revenue over the past many years. Congress' directive to the parties to agree on the terms of a new lease is inconsistent with a right of further renewal.

(d) The conflict between the circuit courts is illusory

The claimed circuit court conflict regarding sovereign immunity is not one which needs to be resolved by this Court. The Tenth Circuit has recognized that its decision in *Dry Creek Lodge, Inc. v. Arapahoe and Shoshone Tribes*, 623 F.2d 682 (10th Cir. 1980), is questionable and has repeatedly refused to follow the holding. *Nero v.*

Cherokee Nation, 892 F.2d 1457 (10th Cir. 1989); *Enterprise Mgt. Consultants v. U.S. ex rel. Hodel*, 883 F.2d 890 (10th Cir. 1989); *Seneca-Cayuga Tribe v. State ex rel. Thompson*, 874 F.2d 709 (10th Cir. 1989); *White v. Pueblo of San Juan*, 728 F.2d 1307 (10th Cir. 1984); *Jicarilla Apache Tribe v. Andrus*, 687 F.2d 1324 (10th Cir. 1982); *Ramey Construction Co. v. Apache Tribe of the Mescalero Reservation*, 673 F.2d 315 (10th Cir. 1982).

Likewise, other Circuit Courts and District Courts have declined to apply *Dry Creek Lodge*, and the decision has been roundly criticized by commentators. *See, e.g., R.J. Williams Co. v. Fort Belknap Housing Authority*, 719 F.2d 979 (9th Cir. 1983); *Snow v. Quinault Indian Nation*, 709 F.2d 1319 (9th Cir. 1983); *Trans-Canada Enterprise, Ltd. v. Muckleshoot Indian Tribe*, 634 F.2d 474 (9th Cir. 1980); *Wichita and Affiliated Tribes v. Hodel*, 788 F.2d 765 (D.C. Cir. 1986); *Williams v. Pyramid Lake Paiute Tribe*, 625 F. Supp. 1457 (D. Nev. 1986); *United Nuclear Corp. v. Clark*, 584 F. Supp. 107 (D.D.C. 1984); *Stroud v. Seminole Tribe*, 574 F. Supp. 1043 (S.D.Fla. 1983); *Barnes v. White*, 494 F. Supp. 194 (N.D.N.Y. 1980). *See also* Gover, *Avoiding* Santa Clara Pueblo v. Martinez: *The Litigation in Federal Court of Civil Actions under the Indian Civil Rights Act*, 8 Hamline L. Rev. 497 (1985); Note, *In Defense of Tribal Sovereign Immunity*, 95 Harv. L. Rev. 1058 (1982).

(e) The Rule 19 dismissal was proper

The petitioners filed a complaint which named the Seneca Nation of Indians and the Salamanca Indian Lease Authority and its individual members as

defendants and claimed that they were entitled to a renewal lease for a full 99-year term. They also claimed that the statute creating the Salamanca Indian Lease Authority was unconstitutional and illegal. Moreover, they claimed that the Seneca Nation Settlement Act of 1990 was unconstitutional. The District Court, in addition to dismissing the complaint as to the Seneca Nation of Indians (49a-59a), determined that the Seneca Nation was an indispensable party with respect to the agreement between the City and the Nation and that the Seneca Nation was an indispensable party *in this suit* as to claims regarding the unconstitutionality of the Seneca Nation Settlement Act of 1990. (6ra-17ra).

Contrary to the claims of the petitioners, the dismissal of count ten (10) under Rule 19 does not mean that no effective constitutional challenge could ever be made to the Seneca Nation Settlement Act of 1990. Petitioners merely had to name the United States or an officer of the federal government acting under the statute as a defendant in a separate action *without naming the Nation* to test the constitutionality of the statute. The mere fact that payments are to be made to the Seneca Nation would not mean that the Nation was an indispensable party to any suit seeking to raise the constitutionality of the statute. Indeed, there are many ways in which a party possessing necessary standing can test the constitutionality of the statute without naming parties who may have a financial interest in the law. In any event, the District Court did not abuse its discretion in this case in finding that the Seneca Nation was an indispensable party in the action as pled by petitioners. *See Cloverleaf Standardbred Owners Assoc. v. National Bank*, 699 F.2d 1274 (D.C. Cir. 1983); *Walsh*

v. Centeio, 692 F.2d 1239 (9th Cir. 1982); *Bakia v. County of Los Angeles,* 687 F.2d 299 (9th Cir. 1982); *Owens-Illinois, Inc. v. Lake Shore Land Co., Inc.,* 610 F.2d 1185 (3rd Cir. 1979). *See also* Wright & A. Miller, *Federal Practice and Procedures,* §1604 at 45-46 (1972).

(f) Petitioners have been deprived of no rights

The first cause of action dismissed (cause of action one) sought a declaratory judgment against the Nation that the Act of 1875 and the leases issued under the authority of said act provided the lessees with continuous renewability of existing leases, a 99-year term, and the employment of arbitration for resolution of the terms, conditions, and amount of annual rental which could not be agreed upon through negotiation. It is this claimed right that petitioner asserts has been denied by reason of sovereign immunity and lack of forum. The reality is petitioners have no such right as determined by the Second Circuit in holding that all renewals provided for under the act of 1875 had been accorded the lessees.

The dismissal of petitioners' eighth cause of action, petitioners allege, deprives them of the right to a declaratory judgment that the agreement between the city and Nation of July 1990 is invalid and unconstitutional as an exercise of rights reserved exclusively to Congress. This is pedantic. The Seneca Nation Settlement Act of 1990, *supra,* specifically provides that, "It is the purpose of this act—(1) to effectuate and support the Agreement between the city and the Seneca Nation, and facilitate the negotiation of new leases with lessees in the congressional villages." (Act Sec. 2 (b)(1)). Congress having declared its support of such agreement has provided ratification for that

which petitioners themselves urge is the prerogative of Congress. Consequently, no rights of petitioners have been denied.

The dismissal of petitioners tenth cause of action has, likewise, not denied petitioners any rights, constitutional or otherwise. The petitioners' tenth cause of action sought to declare the Seneca Nation Settlement Act of 1990 void and unconstitutional. Petitioners have not been deprived of any opportunity to challenge the cited act. It is simply a question of petitioner having improperly postured the challenge in an action against the Seneca Nation as opposed to an action, predicated upon proper standing, against the proper dependants.

The petitioners were offered a lease by the Seneca Nation, to accept or reject in its offered form. Congress, after hearings and complete review of the lease situation ordained that the petitioners negotiate for a lease and Congress stated that its purpose was not only to effect resolution by negotiation but provided that the very lease offered by the Nation could be negotiated (*see* Seneca Nation Settlement Act of 1990, Sec. 2 (b)(3)). Instead, petitioners sought to litigate the issue of renewability, 99-year term and arbitration for terms and conditions, and annual rental. Petitioners further sought to prevent negotiation of the lease process to completion by denying the Nation the reparation monies to be provided by Congress as a condition precedent to the Nation's offer of lease. The petitioners' inability to accomplish their desired ends has not resulted in any deprivation of rights. Each challenge has been correctly denied by the courts below.

The petitioners choose to rely on a quotation from an obscure historian which states that there was an additional renewal period rather than on the Second Circuit which has clearly ruled that both renewals provided for in the 1875 Act have already taken place. A plain reading of the statutes involved establishes that the petitioners do not have a perpetual right of renewal.

The reasons advanced for granting the writ are flawed. There is a specific canon of construction involving statutes which claim to waive the sovereign immunity of Indians. The rule of construction is that the waiver must be "unequivocally expressed" and cannot be implied. *United States v. Testan*, 424 U.S. 392, 399 (1976) (quoting *United States v. King*, 395 U.S. 1, 4 (1969)). Legislative history cannot be used to supply the unequivocal expression. "If Congress' intention is 'unmistakably clear in the language of the statute,' recourse to legislative history will be unnecessary; if Congress' intention is not unmistakably clear, recourse to legislative history will be futile . . ." *Dellmuth v. Muth*, 491 U.S. _____, 109 S. Ct. 2397, 2401 (1989) (quoted with approval by Second Circuit. *Fluent*, 928 F.2d at 546-7 (9a)). The language in implementation of the Act of 1875 discloses, as the Second Circuit has set forth, that there are no more renewals available to petitioners. Therefore, the petitioners have no right or entitlement to another renewal and have not been deprived of constitutional rights by the application of the doctrine of sovereign immunity. The Rule 19 dismissal of the other counts of the complaint, in which the Seneca Nation is an indispensable party, was proper under the decided cases.

CONCLUSION

The Act of 1875 provided for two renewals which subsequently occurred in 1880 and 1892. There is no further right to renew. Thus, the petitioners have been deprived of no right by the decision of the court sought to be reviewed in this Court by certiorari. The Act of 1875 does not contain an unequivocal expression of intent to waive sovereign immunity and the Seneca Nation is immune from suit. The decision of the court below dismissing the case against the Seneca Nation is correct in all respects and the petition for certiorari should be denied.

Dated: Buffalo, New York
June 20, 1991

Respectfully submitted,

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APPENDIX

Act of Feb. 19, 1875, ch. 90, 18 Stat. 330 (1875)

"CHAP. 90.—An act to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany reservations, and to confirm existing leases.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That all leases of land with the Cattaraugus and Allegany reservations in the State of New York, heretofore made by or with the authority of the Seneca Nation of New York Indians, to railroad corporations, are hereby ratified and confirmed; and said Seneca Nation may, in accordance with their laws and form of government, lease lands with said reservations for railroad purposes.

"SEC. 2. That the President of the United States shall appoint three commissioners, whose duty it shall be, as soon as may be, to survey, located and establish proper boundaries and limits of the villages of Vandalia, Carrolton, Great Valley, Salamanca, West Salamanca, and Red House, within said Allegany reservation, including therein, as far as practicable, all lands now occupied by white settlers and such other lands as, in their opinion, may reasonably be required for the purposes of such villages; and they shall cause a return of their doings in writing, together with maps of such surveys and locations duly certified by them, to be filed in the office of the county clerk of the county of Cattaraugus in said State, there to be recorded and preserved. The boundaries of said villages so surveyed, located, and established shall be the limits of said villages for all the purposes of this act.

"SEC. 3. That all leases of land situate within the limits of said villages when established as hereinbefore provided, except those provided for in the second section of this act, in which Indians or said Seneca Nation, or persons claiming under them are lessors, shall be valid and binding upon the parties thereto, and upon said Seneca Nation for a period of five years from and after the passage of this act, except such as by their terms may expire at an earlier date; and at the end of said period, or at the expiration of such leases as terminate within that time, said nation through its councillors shall be entitled to the possession of the said lands, and shall have the power to lease the same: *Provided, however,* That at the expiration of said period, or the termination of said leases, as hereinbefore provided, said leases shall be renewable for periods not exceeding twelve years, and the persons who may be at such time the owner or owners of improvements erected upon such lands, shall be entitled to such renewed leases, and to continue in possession of such lands, on such conditions as may be agreed upon by him or them and such councillors; and in case they cannot agree upon the conditions of such leases, or the amount of annual rents to be paid, then the councillors shall appoint one person, and the other party or parties shall choose one person, as referee to fix and determine the terms of said lease and the amount of annual rent to be paid; and if the two so appointed and chosen cannot agree, they shall choose a third person to act with them, the award of whom, or the major part of whom, shall be final and binding upon the parties; and the person or persons owning said improvements shall be entitled to a lease of said land and to occupy and improve the same according to the terms of said award, he or they paying rent and otherwise complying with the said lease or said award; and whenever any lease shall

expire after its renewal as aforesaid, it may, at the option of the lessees, his heirs or assigns, be renewed in the manner hereinbefore provided.

"SEC. 4. That said Seneca Nation is hereby authorized, by resolution of its councillors, duly elected according to the laws and the system of government of said nation, or in such other manner as said nation in council may determine, to lease lands within said villages to which, by the laws or customs of said nation, no individual Indian or Indians, or other person claiming under him or them, has or is entitled to the rightful possession.

"SEC. 5. That it shall be the further duty of the said commissioners to cause all lands within such villages now leased, as hereinbefore mentioned, to be surveyed and defined as near as may be, and to cause the same to be designated upon the maps of such villages hereinbefore mentioned and provided for. All leases of lands within the said villages, whether now existing or hereafter to be made under the provisions of this act, shall be recorded in the office of the clerk of said county of Cattaraugus in the same manner and with like effect as similar instruments relating to lands lying in said county outside of said reservations are recorded by the laws of said State of New York. All leases herein mentioned or provided for shall pass by assignment in writing, will, descent, or otherwise in the manner provided by the laws of said State: *Provided, however,* That the rights of Indians in such leases shall descend as provided by the laws of said Seneca Nation.

"SEC. 6. That all moneys arising from rents under the provisions of this act which shall belong to said Seneca Nation shall be paid to and recoverably by the treasurer

of said Seneca Nation, and expended in the same manner and for the same purposes as are other revenues or moneys belonging to said Seneca Nation.

"SEC. 7. That the courts of the State of New York within and for the county of Cattaraugus, having jurisdiction in real actions, and the circuit and district courts of the United States in and for the northern district of said State, shall have jurisdiction of all actions for the recovery of rents and for the recovery of possession of any real property within the limits of said villages, whether actions of debt, ejectment, or other forms of action, according to the practice in said courts; and actions of forcible entry and detainer, or of unlawful detainer arising in said villages, may be maintained in any of the courts of said county which have jurisdiction of such actions.

"SEC. 8. That all laws of the State of New York now in force concerning the laying out, altering, discontinuing, and repairing highways and bridges shall be in force within said villages, and may, with the consent of said Seneca Nation in council, extend to, and be in force beyond, said villages in said reservation, or in either of them; and all municipal laws and regulations of said State may extend over and be in force within said villages: *Provided, nevertheless,* That nothing in this section shall be construed to authorize the taxation of any Indian, or the property of any Indian not a citizen of the United States.

Approved, February 19, 1875."

Act of Sept. 30, 1890, ch. 1132,
26 Stat. 558 (1890)

"CHAP. 1132.—An act to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany Reservations, and to confirm existing leases.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That whenever the leases of land situate within the limits of the villages mentioned in the act of Congress entitled 'An Act to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany Reservations, and to confirm existing leases,' approved February nineteenth, eighteen hundred and seventy-five, except leases to railroads, shall by the terms of said act be renewable, the same shall be renewable for a term not exceeding ninety-nine years, instead of the term of twelve years, as therein provided, subject to all other terms and conditions of said act.

Approved, September 30, 1890."

Seneca Nation Settlement Act of 1990,
Pub. L. No. 101-503, 104 Stat. 1292 (1990)

"An Act

"To provide for the renegotiation of certain leases of the Seneca Nation, and for other purposes.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Seneca Nation Settlement Act of 1990'.

"SEC. 2. FINDINGS AND PURPOSES.

"(a) CITY OF SALAMANCA AND CONGRESSIONAL VILLAGES.—The Congress finds and declares that:

(1) Disputes concerning leases of tribal lands within the city of Salamanca and the congressional villages, New York, have strained relations between the Indian and non-Indian communities and have resulted in adverse economic impacts affecting both communities.

(2) Some of the significant historical events which have led to the present situation include—

(A) beginning in the mid-nineteenth century, several railroads obtained grants or leases of rights of way through the Allegany Reservation without Federal authorization or approval and on terms which did not adequately protect the interests of the Seneca Nation;

(B) after construction of these railroads, Allegany Reservation lands were leased to railroad employees, persons associated with the railroads, residents of the city and farmers without Federal authorization or approval and on terms which did not adequately protect the interests of the Seneca Nation;

(C) none of these leases had Federal authorization or approval and, after the courts ruled these leases invalid, Congress enacted the Act of February 19, 1875 (18 Stat. 330), confirming existing leases of Allegany Reservation lands, authorizing further leasing by the Seneca Nation, and making the confirmed leases renewable for a twelve year period;

(D) the Act of September 30, 1890 (26 Stat. 558), amended the 1875 Act by substituting a renewal term of 'not exceeding ninety-nine years' for the original renewal term of twelve years; and

(E) in 1952 the Seneca Nation filed a claim with the Indian Claims Commission against the United States for use of improper lease fees, and in 1977 a settlement was reached regarding such claim, providing for the payment of $600,000 to the Seneca Nation covering the period beginning in 1870 to the end of 1946.

(3) An analysis of historic land values indicates that the payments made under the original lease agreement and under the settlement described in paragraph (2)(E) were well below the actual lease value of the property.

(4) The approaching expiration of the Salamanca and congressional village leases on February 19, 1991, has created significant uncertainty and concern on the part of the city of Salamanca and Salamanca residents, and among the residents of the congressional villages, many of whose families have resided on leased lands for generations.

(5) The future economic success of the Seneca Nation, city, and congressional villages is tied to the securing of a future lease agreement.

(6) The Federal and State governments have agreed that there is a moral responsibility on the part of both governments to help secure a fair and equitable settlement for past inequities.

"(b) PURPOSE.—It is the purpose of this Act—

(1) to effectuate and support the Agreement between the city and the Seneca Nation, and facilitate the negotiation of new leases with lessees in the congressional villages;

(2) to assist in resolving the past inequities involving the 1890 leases and to secure fair and equitable compensation for the Seneca Nation based on the impact of these leases on the economy and culture of the Seneca Nation;

(3) to provide a productive environment between the Seneca Nation and lessees for negotiating the leases provided for under the Agreement;

(4) to provide stability and security to the city and the congressional villages, their residents, and businesses;

(5) to promote the economic growth of the city and the congressional villages;

(6) to promote economic self-sufficiency for the Seneca Nation and its members;

(7) to promote cooperative economic and community development efforts on the part of the Seneca Nation and the city; and

(8) to avoid the potential legal liability on the part of the United States that could be a direct consequence of not reaching a settlement.

"SEC. 3. DEFINITIONS.

"For the purposes of this Act—

(1) the term '1890 lease' means a lease made by the Seneca Nation which is subject to—

(A) the Act entitled 'An Act to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany reservations, and to confirm existing leases' approved February 19, 1875 (chap. 90, 18 Stat. 330); and

(B) the Act entitled 'An Act to authorize the Seneca Nation of New York Indians to lease lands within the Cattaraugus and Allegany Reservations, and to confirm existing leases' approved September 30, 1890 (chap. 1132, 26 Stat. 558);

(2) the term 'Agreement' means the document executed by the Seneca Nation and the city entitled 'Agreement between the Seneca Nation of Indians and the City of Salamanca', including the appendix to the Agreement;

(3) the term 'city' means the city of Salamanca, New York;

(4) the term 'lessee' means the holder of an 1890 lease which either expires in 1991 or is one of the leases listed in document 1 of the Technical Documents, including any lessee who holds an 1890 lease by reason of assignment, inheritance, or other manner as provided by the Act referred to in paragraph (1)(A);

(5) the term 'memorandum of understanding' means an agreement between the State and the Seneca Nation pertaining to the payment of the funds to be provided pursuant to this Act, which memorandum of understanding reflects an agreement between the Seneca Nation and the State concerning a mechanism and schedule of payments for the funds described in section 6(c);

(6) the term 'Secretary' means the Secretary of the Interior;

(7) the term 'Seneca Nation' means the Seneca Nation of Indians of the Allegany, Cattaraugus, and Oil Spring Reservations;

(8) the term 'State' means the State of New York;

(9) the term 'Technical Documents' means the documents which comprise the appendix to the Agreement; and

(10) the term 'congressional villages' means the villages of Carrollton, Great Valley, and Vandalia in the State of New York.

"SEC. 4. NEW LEASES AND EXTINGUISHMENT OF CLAIMS.

"(a) NEW LEASES.—If the Seneca Nation offers new leases in accordance with the Agreement, this Act shall apply with respect to the Seneca Nation. The Seneca

Nation shall supply copies of such leases to the Secretary and shall certify in writing that it has supplied the Secretary with copies of written offers to all lessees entitled to an offer.

"(b) EXTINGUISHMENT OF CLAIMS.—The Seneca Nation shall execute appropriate documents relinquishing all claims against the United States, the State, the city, the congressional villages, and all prior lessees for payment of annual rents prior to February 20, 1991, with respect to all prior and existing leases.

"(c) EFFECTIVE DATE OF LEASES AND RELINQUISHMENTS.—(1) The relinquishment of claims against the United States shall be effective upon payment by the United States to the Seneca Nation of the funds provided in section 6 of this Act.

(2) The offers, and any acceptances thereof, referred to in subsection (a), and the relinquishment of claims against the State, the city, the congressional villages, and all prior lessees for payment of annual rents referred to in subsection (b) shall not be binding on the Seneca Nation until after the later of the dates on which (1) Congress, or (2) the legislature of the State appropriates the amount of funds set forth in section 6 of the Seneca Nation and the State agree upon a schedule and mechanism for payments for funds pursuant to section 6(c). Such agreement shall render the offers, acceptances and the relinquishment effective so long as the payments are made as agreed upon by the Seneca Nation and the State.

"SEC. 5. RESPONSIBILITIES AND RESTRICTIONS.

"(a) SENECA NATION.—The Congress finds that the Seneca Nation is solely responsible for negotiation of the leases under the Agreement in its own interest and

approval of any such lease by the United States is not required.

"(b) LESSEES.—The Congress finds that—

(1) the lessees of leases with the Seneca Nation are responsible for representing their own interest in lease negotiations with the Seneca Nation; and

(2) nothing in this Act shall be construed to prevent the lessees from collectively negotiating with the Seneca Nation regarding such leases, whether through informal groups or as delegations formally sanctioned by either the State or local governments.

"(c) UNITED STATES.—(1) The United States shall not serve in a capacity to approve leases of the Seneca Nation.

(2) Federal funds may not be obligated or expended, directly or indirectly, for annual payments under any such lease, except for funds that may be available under a conventional, nationwide program.

"(d) STATE.—(1) The State shall not serve in a capacity to approve leases of the Seneca Nation.

(2) State funds may not be obligated or expended, directly or indirectly, for annual payments under any such lease.

"SEC. 6. SETTLEMENT FUNDS.

"(a) IN GENERAL.—In recognition of the findings and purposes specified in section 2, the settlement funds provided pursuant to this Act shall be provided by the United States and the State. The Secretary may not obligate or expend funds provided under subsection (b)

until the Secretary determines that there is an agreed upon and signed memorandum of understanding.

"(b) FUNDS PROVIDED BY UNITED STATES.—

(1) CASH PAYMENT.—The Secretary shall pay to the Seneca Nation the amount of $30,000,000, which is the Federal share of the cash payment to be managed, invested, and used by the Nation to further specific objectives of the Nation and its members, all as determined by the Nation in accordance with the Constitution and laws of the Nation.

(2) ECONOMIC DEVELOPMENT.—(A) In addition to the amount provided under paragraph (1), the Secretary shall pay to the Seneca Nation the amount of $5,000,000 to be used for the economic and community development of the Seneca Nation, including the city of Salamanca, which is an integral part of the Seneca Nation's Allegany Reservation. Such amount shall be deposited by the Secretary, administered, and disbursed in accordance with subparagraph (B).

(B)(i) The sum of $2,000,000 shall be deposited in a separate interest bearing account of the Seneca Nation. The account shall be administered, and the principal and interest thereon disbursed, by the Seneca Nation in accordance with a plan approved by the Council of the Seneca Nation to promote the economic and community development of the Seneca Nation. Until the principal is expended pursuant to such plan, the income accruing from such sum shall be disbursed to the treasurer of the Seneca Nation on a quarterly basis to fund tribal government operations and to provide for the general welfare of

the Seneca Nation and its members. The Seneca Nation may in its discretion add the accrued income to the principal.

(ii) The sum of $3,000,000 shall be deposited in an escrow account which shall be owned by the Seneca Nation. The escrow agent shall be selected by agreement of the Seneca Nation and the city. The escrow account shall remain in existence for a period of ten years from the date on which the principal is deposited or until all payments provided for under section V.D. of the Agreement have been made. The escrow account shall be held and disbursed for economic and community development as set forth in section V.D. of the Agreement. Upon the expiration of the ten-year period, the $3,000,000 principal shall be disbursed in accordance with a plan approved by the Council of the Seneca Nation to promote the economic and community development of the Seneca Nation.

"(c) FUNDS TO BE PROVIDED BY THE STATE.—The State, in accordance with its laws and regulations, shall provide the sum of $16,000,000 in cash payments and $9,000,000 for economic or community development subject to the provisions of the memorandum of understanding.

"(d) TIME OF PAYMENTS.—The payments required by this section on the part of the United States shall be made within 30 days of the Secretary's determination that the Seneca Nation has complied with section 4, or upon the availability of the amounts necessary to carry out this Act, if such determination has previously been made. If the Secretary determines that the Seneca Nation has not complied with section 4, he shall advise the Seneca Nation in writing of all steps it must take to comply.

"(e) LIMITATION.—The only amounts available to carry out this Act shall be those amounts specifically appropriated by the Congress or the legislature of the State to carry out this Act.

"SEC. 7. CONDITIONS PRECEDENT TO PAYMENT OF UNITED STATES AND STATE FUNDS.

"Amounts may not be expended from—

(1) the $30,000,000 and the $5,000,000 provided by the United States under section 6(b), and

(2) the $16,000,000 and $9,000,000 provided by the State under section 6(c),

until after the authorized officials of the Seneca Nation execute new leases with all lessees who accept the Seneca Nation's offer of a new lease, as filed with the Secretary under section 4(a), and execute approriate documents relinquishing all claims for payment of annual rents prior to February 20, 1991, with respect to such leases.

"SEC. 8. MISCELLANEOUS PROVISIONS.

"(a) LIENS AND FORFEITURES, ETC.—Subject to subsection (b), the provisions of section 7 of the Indian Tribal Judgment Funds Use and Distribution Act (25 U.S.C. 1407) shall apply to any payment of funds authorized to be appropriated under this Act and made to individual members of the Seneca Nation. None of the payments, funds, or distributions authorized, established, or directed by this Act, and none of the income derived therefrom, which may be received under this Act by the Seneca Nation or individual members of the Seneca Nation, shall be subject to levy, execution, forfeiture, garnishment, lien, encumbrance, seizure, or State or local taxation.

"(b) ELIGIBILITY FOR GOVERNMENT PROGRAMS.—None of the payments, funds or distributions authorized, established, or directed by this Act, and none of the income derived therefrom, shall affect the eligibility of the Seneca Nation or its members for, or be used as a basis for denying or reducing funds under, any Federal program.

"(c) LAND ACQUISITION.—Land within its aboriginal area in the State or situated within or near proximity to former reservation land may be acquired by the Seneca Nation with funds appropriated pursuant to this Act. State and local governments shall have a period of 30 days after notification by the Secretary or the Seneca Nation of acquisition of, or intent to acquire such lands to comment on the impact of the removal of such lands from real property tax rolls of state political subdivisions. Unless the Secretary determines within 30 days after the comment period that such lands should not be subject to the provisions of section 2116 of the Revised Statutes (25 U.S.C. 177), such lands shall be subject to the provisions of that Act and shall be held in restricted fee status by the Seneca Nation. Based on the proximity of the land acquired to the Seneca Nation's reservations, land acquired may become a part of and expand the boundaries of the Allegany Reservation, the Cattaraugus Reservation, or the Oil Spring Reservation in accordance with the procedures established by the Secretary for this purpose.

"SEC. 9. LIMITATION OF ACTION.

"Notwithstanding any other provision of law, any action to contest the constitutionality or validity under law of this Act shall be barred unless the action is filed on or before the date which is 180 days after the date of

enactment of this Act. Exclusive jurisdiction over any such action is hereby vested in the United States District Court for the Western District of New York.

"SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

"There is authorized to be appropriated such sums as may be necessary to carry out this Act.

Approved, November 3, 1990."

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No. 90-1889

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

JOSEPH FLUENT, *et al.*,
Petitioners,

v.

SALAMANCA INDIAN LEASE AUTHORITY, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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OPPOSITION OF RESPONDENT SENECA NATION OF INDIANS TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Seneca Nation of Indians ("Nation") disagrees with petitioners' statement of questions presented. We believe the issues are:

1. Whether the sovereign immunity of the Seneca Nation protects it from a suit by lessees of the Nation's lands to compel the Nation to renew their leases?

2. Whether a challenge to the validity of an agreement entered into betwen the Seneca Nation and the City of Salamanca and to the Act of Congress authorizing and implementing that agreement may proceed where no federal official has been made a party and where the Seneca Nation has been dismissed under Rule 19, Fed. R. Civ. P., because it is immune from suit?

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On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

---

OPPOSITION OF RESPONDENT SENECA NATION OF INDIANS TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

The Seneca Nation's Allegany Reservation, set aside by the Treaty of November 11, 1794,[1] includes most of the City of Salamanca, New York ("City") and three small

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[1] Treaty of November 11, 1794, 7 Stat. 44. *See, The New York Indians*, 72 U.S. (5 Wall.) 761 (1867) (describing history of Allegany Reservation); *Oneida Indian Nation v. County of Oneida*, 414 U.S. 661, 671-674 (1974) (describing the Nation's right under the Treaty of 1794 and applicable federal statutes to possession of its Allegany Reservation lands); *United States v. Forness*, 125 F.2d 928 (2d Cir.), *cert. denied sub nom. City of Salamanca v. United States*, 316 U.S. 694 (1942). Petitioners' statement of the "historical framework" of the Reservation (Pet. pp. 7-8) contains several inaccuracies which, however, are not sufficiently pertinent to merit a detailed response.

rural "congressional" villages. These communities are located on lands which were leased to non-Indians beginning in the mid-19th century under authority which the New York Legislature purported to grant. *See, Oneida Indian Nation v. County of Oneida*, 414 U.S. 661, 672, n.8 (1974). These leases were illegal, as the state court held in 1870, because they lacked the consent of Congress as required by the Non-Intercourse Act. *Id.* Congress, over strong Indian opposition, approved these leases by the Act of February 19, 1875, 18 Stat. 330, as amended by the Act of September 30, 1890, 26 Stat. 558. *See*, S. Rep. No. 511, 101st Cong., 2d Sess. 3-5 (1990). The leases approved by the 1875 Act were first renewed in 1880 for a maximum term of 12 years, as provided for under the 1875 Act, and were then renewed for the second and final term in 1892 (and continuing for some years thereafter) for a maximum term of 99 years as provided for under the 1890 amendment to the 1875 Act. All of these leases expired on February 19, 1991.[2]

During the past century, the Seneca Nation received fixed sums as rental from the leased lands, as low as $1 per year. *See*, S. Rep. No. 511, 101st Cong., 2d Sess. 1-2 (1990); H.R. Rep. No. 832, 101st Cong., 2d Sess. 4 (1990). In 1942, the Second Circuit, in upholding the Seneca Nation's power to cancel certain of the leases for default in the payment of rent, found that the rent under these leases "comes close to being unconscionably small" and further stated that "[a] lease of that kind may shock even a calloused conscience." *United States v.*

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[2] Petitioners wrongly describe the new leases offered by the Nation after the decision in *United States v. Forness*, 125 F.2d 928 (2d Cir.), *cert. denied sub nom. City of Salamanca v. United States*, 316 U.S. 694 (1942) as 99-year leases. (Pet. p. 2.) These leases, offered by the Nation after the Second Circuit in 1942 upheld the Nation's right to cancel the former leases for default in the payment of rent, expired on February 19, 1991. *See, Fluent v. Salamanca Indian Lease Authority*, 928 F.2d 542, 544, n.1 (2d Cir. 1991) (Pet. App. 4a.)

Forness, 125 F.2d 928, 941 (2d Cir.), *cert. denied sub nom. City of Salamanca v. United States*, 316 U.S. 694 (1942).

Over the course of some twenty years, the Seneca Nation negotiated with the City and the Salamanca Indian Lease Authority ("SILA") to resolve the lease controversy in advance of the leases' expiration. In July of 1990, the agreement resulting from these negotiations was executed by the Nation and the City. The agreement sets forth the terms on which the Seneca Nation agreed to offer new leases for a forty year term with a right to renew for an additional 40 years to all existing lessees.[3]

Because federal law prohibits any conveyance of Indian lands without consent of Congress, 25 U.S.C. § 177; *County of Oneida v. Oneida Indian Nation*, 470 U.S. 226 (1985), the approval of Congress for the July 1990 agreement and for the new leases was sought and obtained in the Seneca Nation Settlement Act of 1990, Pub. L. No. 101-503, 104 Stat. 1292. *See*, Section 4(a) (providing for the Nation to offer new leases on the terms set forth in its July 1990 agreement with the City).[4] Pursuant to

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[3] The negotiation of an agreement between the Nation and the City to provide new leases is in accordance with the Seneca Leasing Act of August 14, 1950, 64 Stat. 442, which provides "[t]hat nothing herein contained shall be construed to authorize the city of Salamanca to grant new leases, or to modify, change, or alter existing leases, except with the consent of the Seneca Nation and upon terms agreeable to the Seneca Nation, such consent and such agreement to be obtained from such officer or agency of the Seneca Nation as may be duly authorized by the Seneca Nation to give such consent or arrive at such agreement."

[4] The 1990 Act states that the leasing of Seneca lands for "well below the actual lease value of the property", *id.* at Secs. 2(a)(3), 2(b)(2), should not be continued. Congress was aware when it passed the 1990 Act "that the rents [in the 19th century leases] were extremely low even for that day and age," and that "[t]here were no escalation clauses in the leases and rents have continued for nearly 100 years at sums as low as $1 dollar per lease." S. Rep. No. 511, 101st Cong., 2d Sess. 1-2 (1990). Congressional committees

the Act and agreement, the new leases the Nation has now offered to each existing lessee are for a rental based on the appraised land value of each parcel. S. Rep. No. 511, 101st Cong., 2d Sess. 2 (1990). This required an increase in annual rentals, from as low as $1 or $2 per year to around $200 per year for ordinary residential parcels.

As part of the resolution of the lease controversy in the 1990 Act, Congress also provided $35 million to the Seneca Nation and the State of New York has agreed to pay $25 million to the Seneca Nation, *id.* at Sec. 6, on condition that the Nation execute new leases with all lessees who accept its new lease offer and relinquish all claims (against the United States, the State, the City and existing lessees) for payment of inadequate past lease rentals. *Id.* at Sec. 7.

Petitioners claim to hold leases of lands owned by the Seneca Nation, and are dissatisfied with the new lease terms offered by the Nation in accordance with the 1990 Act. They brought suit against the Seneca Nation, the City, SILA, and various City and SILA officials, *inter alia*,[5] to compel the Nation to lease its lands to them for an additional 99 years, to void the July 1990 agreement between the Nation and the City and to invalidate the 1990 Act as unconstitutional as "a violation of the taxing and spending clause of the United States Constitution."[6] Both the District Court and the unanimous panel of the

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considering the bill reported that "[t]here does not seem to be any disagreement that the rental terms of the current leases are grossly unfair," and that "the lessees . . . have enjoyed the benefit of a Federally-conferred subsidy of their lease costs at the expense of the Seneca Nation for 99 years." *Id.* at 5; H.R. Rep. No. 832, 101st Cong., 2d Sess. 4-5 (1990).

[5] Various claims against the City and SILA that do not involve the Nation remain pending in the District Court.

[6] Complaint, para. 151, quoted at n.14 *infra*.

Second Circuit held that these claims should be dismissed under the doctrine of sovereign immunity.

REASONS TO DENY THE WRIT

I. THE DECISION BELOW IS FULLY CONSISTENT WITH AND FAITHFULLY APPLIES PRINCIPLES ENUNCIATED BY THIS COURT

There is no reason for this Court to review the decision of the Second Circuit, which is based on the well-settled principle of tribal sovereign immunity, *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978), reaffirmed by this Court just this Term. *Oklahoma Tax Comm'n v. Citizen Band of Potawatomi Indian Tribe*, 498 U.S. ——, 112 L. Ed. 2d 1112 (1991). *See also, Blatchford v. Native Village of Noatak*, —— U.S. ——, 59 U.S.L.W. 4803 (1991). Here, as in *Potawatomi*, petitioners sued the tribe itself. As this Court stated in *Martinez*, quoting its earlier decision in *United States v. United States Fidelity & Guaranty Co.*, 309 U.S. 506, 512 (1940), " 'without congressional authorization,' the 'Indian Nations are exempt from suit.' " 436 U.S. at 58.

This Court of course very recently expressly declined to reexamine the tribal immunity doctrine in *Potawatomi*, 112 L. Ed. 2d at 1119-1121, noting that "Congress has always been at liberty to dispense with . . . tribal immunity or to limit it" and that "Congress has occasionally authorized limited classes of suits against Indian tribes . . ." *Id.* at 1120. Here, Congress in the 1990 Act very recently addressed the problems presented by the expiring leases in Salamanca and the villages, and ratified an agreement between the Nation and City offering new long-term leases to each lessee *without* waiving the Nation's immunity from suit.[7]

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[7] Petitioners conceded at oral argument before the District Court that the Act of 1990 does not waive the Nation's immunity from suit. (Pet. App. 50a.)

Petitioners claim that the earlier 1875 Act waived the Nation's immunity from suit, but as the Second Circuit stated, it is settled that a "waiver of tribal immunity cannot be implied but rather must be 'unequivocally expressed,' *Martinez*, 436 U.S. at 58-59 (citations omitted)." (Pet. App. 8a.) Both the Second Circuit and the District Court correctly concluded that nothing in the language of the 1875 Act unambiguously retracts the Nation's immunity from suit.[8]

Petitioners claim that the Second Circuit "refused to consider the legislative history" of the 1875 Act and thereby violated supposed "cannons [sic] of construction requiring careful scrutiny of the legislative history of Indian statutes."[9] (Pet. p. 18.) In fact, the Second

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[8] Section 7 of the 1875 Act authorizes jurisdiction over "all actions" (1) "for the recovery of rents" and (2) for the "*recovery* of possession of any real property within . . . [Salamanca or the congressional villages] whether actions of debt, ejectment, or other forms of action," such as "forcible entry and detainer, or . . . unlawful detainer." (emphasis supplied.) As the Second Circuit found, (Pet. App. 9a), the clear purpose of this Section was to authorize *the lessor* to sue lessees who are delinquent, or have breached their leases, for back rent or to "recover" possession (such as by an action to eject or for "forcible entry and detainer", as stated in the Act).

[9] There is no canon of construction that requires special attention to the legislative history of Indian statutes, as petitioners suppose. The standard which applies here is that set out in this Court's decision in *Santa Clara Pueblo*, which requires an unequivocal expression of a waiver of tribal sovereign immunity. 436 U.S. at 58-59. If ambiguity exists as to whether such a waiver has been expressed, then, as the Second Circuit held, the *Santa Clara* standard has not been met. Finally, contrary to petitioners' claims, the controlling canon of construction applicable to statutes affecting Indian rights, enshrined in legions of this Court's decisions, is that:

> "[a]mbiguities in federal law have been construed generously in order to comport with . . . traditional notions of sovereignty and with the federal policy of encouraging tribal independence."

Merrion v. Jicarilla Apache Tribe, 455 U.S. 130, 152 (1982), *quoting White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 143-144

Circuit carefully considered the Act's history and correctly found that it "clearly demonstrates that Congress never intended to waive the immunity of the Nation." (Pet. App. 9a-10a.)[10] There is no reason for this Court to

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(1980); *Accord*: *Montana v. Blackfeet Tribe*, 471 U.S. 759, 766 (1985); *County of Oneida v. Oneida Indian Nation*, 470 U.S. 226, 247 (1985); *Bryan v. Itasca County*, 426 U.S. 373, 392 (1976); *McClanahan v. Arizona Tax Commission*, 411 U.S. 164, 174 (1973).

As this Court recently made clear, important Indian governmental attributes such as sovereign immunity can only be modified by (1) "[e]xplicit statement by Congress" which "is preferable," or (2) "clear and reliable evidence in the legislative history of a statute" evincing the intent of Congress. *United States v. Dion*, 476 U.S. 734, 739 (1986). There is no "clear and reliable" evidence that Congress intended in the 1875 Act to waive the Nation's immunity from suit. *See*, n.10, *infra*.

[10] The legislative history confirms that the central purpose of the 1875 Act, as set forth in the House Report No. 478, 43d Cong., 1st Sess. 2-3 (1874), was to make prior leases of Seneca lands in Salamanca and the villages valid under federal law. This central purpose of the 1875 legislation is also manifest from the remarks of Senators who supported the bill. *E.g.*, 3 Cong. Rec. 909-910 (1875) (Remarks of Senator Ingalls):

> This bill . . . simply proposes that the leases which have been made by these Indians themselves, by their own consent, shall be ratified and confirmed, and held to be valid and binding upon the parties who have voluntarily made these contracts.

Accord: Statement of Senator Bogy, *id.* at 912 ("they have allowed these people to go to these towns; but they are not competent to give the proper title, and the whole object of this bill is to legalize what they themselves have voluntarily done"); Statement of Senator Allison, *id.* at 913 ("the only question now is whether the white people who have made contracts with these Indians, supposing they had authority to make these contracts, shall be deprived of their property and the improvements they have made in these towns or villages, or whether the Congress of the United States, so far as it can lawfully, shall give authority and recognition to these contracts. That is all there is in this case.")

Statements by Senators supporting the bill invariably discussed the court jurisdiction conferred by Section 7 as intended to provide a forum *for the lessor* to sue for back rent or to eject a delinquent

review the Second Circuit's careful application of settled legal principles.

II. THE CASE PRESENTS NO ISSUE OF GENERAL IMPORTANCE

This litigation, the 1990 Settlement Act and the prior acts are all unique to the circumstances presented by the Seneca leases. They affect lands leased by a single tribe under a special set of statutes applicable only to it. Although the Seneca leases in Salamanca and the villages are of course important to the Seneca Nation, the City and the non-Indian lessees—both those who chose to accept the new leases offered pursuant to the 1990 Act and those who did not—this case does not present any issues of general applicability. Moreover, the special problems involved in Seneca leasing have recently been addressed and resolved by Congress, which ratified the agreement providing new leases.[11]

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tenant, and for holders of a valid lease to sue to eject trespassers. These specific problems were discussed at some length. For example, Senator Ingalls stated in response to questions:

> As the Senator knows, between landlord and tenant *it is necessary often to have jurisdiction for the action of forcible entry and detainer. When a lease terminates or when a tenant refuses to pay his rent,* it is necessary to have some tribunal where that claim can be enforced. But as the law now stands, when these difficulties arise, there is no forum where these questions can be adjudicated.

3 Cong. Rec. 910 (emphasis added).

Tellingly, *not a single one* of the specific examples of suits given by Senators supporting the bill suggested that a lessee might sue the Nation. Not one Senator stated that Section 7 was intended to waive the Nation's immunity from suit, or that suit *against the Nation* was necessary to accomplish the bill's purposes.

[11] The 1990 Act was enacted, *inter alia,* to settle "[d]isputes concerning leases of tribal lands within the city of Salamanca [that] . . . have strained relations between the Indian and non-Indian communities and have resulted in adverse economic impacts. . . ." Sec. 2(a)(1). Congress found that "[t]he approaching expiration of the

III. THERE IS NO CONFLICT AMONG THE CIRCUITS

Tribal sovereign immunity has been uniformly recognized and applied in a legion of recent decisions of the First, Fourth, Fifth, Eighth, Ninth, Tenth, and District of Columbia Circuits.[12] Petitioners seek to manufacture a "direct" conflict between the circuits (Pet. pp. 16-18) by relying on a sole Tenth Circuit decision—*Dry Creek Lodge, Inc. v. Arapahoe & Shoshone Tribes*, 623 F.2d 682 (10th Cir. 1980), *cert. denied*, 449 U.S. 1118 (1981) (three Justices dissenting). *Dry Creek Lodge* is inconsistent with *Martinez* and *Potawatomi* and has not even been followed in the Tenth Circuit.[13] In any

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. . . leases on February 19, 1991, has created significant uncertainty and concern on the part of the city of Salamanca and Salamanca residents . . .", *id.* at Sec. 2(a)(4), and that "[t]he future economic success of the Seneca Nation, city, and congressional villages is tied to the securing of a future lease agreement." *Id.* at Sec. 2(a)(5).

[12] *E.g., Makah Indian Tribe v. Verity*, 910 F.2d 555 (9th Cir. 1990); *Weeks Construction Inc. v. Oglala Sioux Housing Authority*, 797 F.2d 668 (8th Cir. 1986); *Wichita and Affiliated Tribes of Oklahoma v. Hodel*, 788 F.2d 765 (D.C. Cir. 1986); *Jicarilla Apache Tribe v. Andrus*, 687 F.2d 1324, 1344-45 (10th Cir. 1982); *Garreaux v. Andrus*, 676 F.2d 1206 (8th Cir. 1982); *Ramey Construction Co. v. Apache Tribe of Mescalero Reservation*, 673 F.2d 315 (10th Cir. 1982); *Sekaquaptewa v. MacDonald*, 619 F.2d 801 (9th Cir.), *cert. denied*, 449 U.S. 1010 (1980); *Bottomly v. Passamaquoddy Tribe*, 599 F.2d 1061, 1064-1067 (1st Cir. 1979); *California v. Quechan Tribe of Indians*, 595 F.2d 1153 (9th Cir. 1979); *Lomayaktewa v. Hathaway*, 520 F.2d 1324 (9th Cir. 1975), *cert. denied*, 425 U.S. 903 (1976); *Cherokee Nation v. State of Oklahoma*, 461 F.2d 674 (10th Cir.), *cert. denied*, 409 U.S. 1039 (1972); *Hamilton v. Nakai*, 453 F.2d 152, 158 (9th Cir. 1971), *cert. denied*, 406 U.S. 945 (1972); *Twin Cities Chippewa Tribal Council v. Minnesota Chippewa Tribe*, 370 F.2d 529, 532 (8th Cir. 1967); *Maryland Casualty Co. v. Citizens National Bank*, 361 F.2d 517 (5th Cir.), *cert. denied*, 385 U.S. 918 (1966); *Haile v. Saunooke*, 246 F.2d 293, 297 (4th Cir. 1957).

[13] In *White v. Pueblo of San Juan*, 728 F.2d 1307 (10th Cir. 1984), for example, the Tenth Circuit was again confronted shortly after *Dry Creek Lodge* with a conflict between a plaintiff non-Indian owner of lands within a Pueblo and the Tribe. The Tenth Circuit

event, the present case does not involve assertion of a tribe's governmental authority over non-Indians who own fee patented lands on a reservation, like the plaintiffs in *Dry Creek Lodge*. Instead, it concerns non-Indian lessees whose rights derive from consensual relationships voluntarily entered into by them with a tribe on tribal land. *Cf., Montana v. United States*, 450 U.S. 544, 565 (1981). There is no conceivable conflict among the circuits on a tribe's immunity from a suit brought by a non-Indian lessee, for the Tenth Circuit itself has specifically held subsequent to *Dry Creek Lodge* that such a suit is barred by tribal immunity. *Jicarilla Apache Tribe v. Hodel*, 821 F.2d 537, 539-540 (10th Cir. 1987).

IV. THE DECISION BELOW DOES NOT BAR FEDERAL COURTS FROM REVIEWING THE CONSTITUTIONALITY OF FEDERAL INDIAN STATUTES

Petitioners present no constitutional argument of substance. They suggest the Second Circuit's decision somehow is inconsistent with *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803), (Pet. p. 14), but the Second Circuit's decision plainly does not foreclose judicial review of the constitutionality of Indian statutes.

Petitioners challenged the 1990 Act as unconstitutional because it violates the "taxing and spending" clause, U.S.

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held that the sovereign immunity doctrine in *Martinez* required dismissal of the case, observing that the "*Dry Creek* opinion must be regarded as requiring narrow interpretation in order to not come into conflict with the decision of the Supreme Court in *Santa Clara*." *Id.* at 1312. *Accord, Nero v. Cherokee Nation of Oklahoma*, 892 F.2d 1457, 1460 (10th Cir. 1989) (*Dry Creek Lodge* exception is "narrowly construed"); *Seneca-Cayuga Tribe v. State ex rel. Thompson*, 874 F.2d 709, 715 n.6 (10th Cir. 1989) ("*Dry Creek Lodge* was based on highly unusual circumstances"); *Ramey Construction Co. v. Apache Tribe of Mescalero Reservation*, 673 F.2d 315, 319 n.4 (10th Cir. 1982) (same).

Const. Art. I, § 8.[14] Given the plenary power of Congress over Indian affairs,[15] this argument is frivolous. The courts below held that once the Nation had been dismissed, petitioners' constitutional claim could not proceed against the remaining defendants—the City, SILA and their officials. This was clearly a correct application of Fed. R. Civ. P. 19, as all pertinent decisions attest.[16] *Marbury v. Madison* does not require judicial review where indispensable parties are absent, or where they are immune from suit. No federal officials are named as parties defendant in this case, and the Second Circuit's decision does not consider whether suit might be brought

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[14] Petitioners' constitutional challenge is set out in the tenth count of the complaint which recites:

> 149. The plaintiff SCOUT represents a membership of approximately 550 lessees. Approximately 530 members are residents of the city and the balance reside in the Congressional Villages.
>
> 150. The Act of 1990 is built like a house of cards on the unconstitutional New York State Public Authorities Law, the unconstitutional Agreement between the City and SNI and the unauthorized and illegal negotiations by SILA.
>
> 151. The Act of 1990 constitutes a waste of taxpayer assets and a violation of the taxing and spending clause of the United States Constitution.
>
> 152. By virtue of the foregoing, the Act of 1990 is unconstitutional.

[15] Recent decisions of this Court teach that so long as Acts relating to Indian affairs "can be tied rationally to the fulfillment of Congress' unique obligation toward the Indians, such legislative judgments will not be disturbed." *Morton v. Mancari*, 417 U.S. 535, 555 (1974); *United States v. Antelope*, 430 U.S. 641 (1977). The 1990 Act easily passes muster under this standard.

[16] *E.g., Makah Indian Tribe v. Verity*, 910 F.2d 555 (9th Cir. 1990); *Enterprise Management Consultants, Inc. v. U.S. ex rel. Hodel*, 883 F.2d 890 (10th Cir. 1989); *Wichita and Affiliated Tribes of Oklahoma v. Hodel*, 788 F.2d 765 (D.C. Cir. 1986). The policy behind Rule 19 of course is longstanding. *See, Shields v. Barrow*, 58 U.S. (17 How.) 130 (1855).

against appropriate federal officials to challenge the constitutionality of the 1990 Act.

Petitioners also claim in this Court for the first time that "lessees' property interests" are "eliminated without any judicial check" by dismissal of their claims against the Nation. (Pet. p. 13.) In fact, the Second Circuit correctly determined that existing lessees held no property rights to renew their expired leases (Pet. App. 11a). The renewals permitted by the 1875 and 1890 Acts had been made and the leases have expired. As the Second Circuit concluded, any other reading of the 1875 Act [17] would lead to perpetual renewals, a result disfavored under long-established decisions of this Court. *Winslow v. Baltimore & Ohio R.R. Co.*, 188 U.S. 646, 654-55 (1903).[18] Accordingly, petitioners and other existing lessees hold no property right that is infringed by dismissal of their claims. And even persons holding property rights cannot sue a sovereign without its consent.

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[17] The Second Circuit also correctly rejected petitioners' interpretation of the prior leases as conferring a renewal right. (Pet. App. 11a.)

[18] Petitioners complain that this portion of the Second Circuit decision is *dicta* (Pet. p. 23, n.14), but it is rather an alternative basis for the Court's judgment. Petitioners' claim that the issue was not presented by the parties below (*ibid.*) is belied by the briefs before the Second Circuit. Petitioners discussed this question extensively (Appellants' Br., pp. 14-17, 20-27) and the Nation responded (Nation Br., pp. 33-35).

CONCLUSION

For the above reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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No. 90-1889

IN THE

Supreme Court of the United States

October Term, 1990

JOSEPH FLUENT, Individually and as a representative of the Class of Salamanca Lessees holding 99-year leases from Seneca Nation of Indians; JAMES V. MONGILLO, Individually and as a representative of the class of Salamanca lessees holding 50-year leases from the Seneca Nation of Indians and KEITH MCCLAIN, Individually and as a representative of the class of congressional village lessees holding 99-year leases from the Seneca Nation of Indians; ROBERT ADAMIC, Individually and on behalf of the class of lessees who signed the "40/40 Lease" Tendered by the Seneca Nation of Indians on or about September 4, 1990; MARILYN ADAMIC, Individually and on behalf of the class of lessees who signed the "40/40 Lease" Tendered by the Seneca Nation of Indians on or about September 4, 1990; SALAMANCA COALITION OF UNITED TAXPAYERS, INC., Individually and on behalf of its membership,

Petitioners,

vs.

SALAMANCA INDIAN LEASE AUTHORITY; DAVID FRANZ, Individually and as Attorney for the City of Salamanca Indian Lease Authority; ANTONIO CARBONE, Individually and as Mayor of the

Respondents.

(Additional Respondents continued inside Front Cover.)

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

REPLY TO RESPONDENT SENECA NATION'S OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

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(Additional Respondents.)

City of Salamanca and also as member of the Salamanca Indian Lease Authority; CITY OF SALAMANCA; PATRICK CALLAGHAN, Individually and as Chairman of the Salamanca Indian Lease Authority; LINDA RYCHCIK, Individually and as member of the Salamanca Indian Lease Authority; HENRY STEFANSKI, Individually and as a member of the Salamanca Indian Lease Authority; OWEN K. PHILLIPS, Individually and as a member of the Salamanca Indian Lease Authority; DANN COLVIN, Individually and as a member of the Salamanca Indian Lease Authority; PAUL TAYLOR; PENNY BUCKLEY; SENECA NATION OF INDIANS,

Respondents.

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IN THE

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JOSEPH FLUENT, Individually and as a representative of the Class of Salamanca Lessees holding 99-year leases from Seneca Nation of Indians, *et al.*,

Petitioners,

vs.

SALAMANCA INDIAN LEASE AUTHORITY, *et al.*,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

REPLY TO RESPONDENT SENECA NATION'S OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

JURISDICTION

This Reply to the Brief in Opposition of Respondent Seneca Nation of Indians to Petition for Writ of Certiorari ("Seneca Nation Opp.") is submitted by Petitioners pursuant to Supreme Court Rule 15.6.

A. This Action Raises Questions That Are Fundamentally Important.

The Seneca Nation of Indians' ("Seneca Nation") statement that "The Case Presents No Issue Of General Importance" (Seneca Nation Opp. at 8) demonstrates the Nation's contempt for Petitioners' federally conferred and constitutionally protected property interests.

The decisions below establish precedent in the Second Circuit, which undoubtedly will be used by other Indian Nations throughout the country, that Indian Nations may disregard their freely assumed and federally approved obligations, without consequence. Those decisions hold that United State's citizens may be denied due process and stripped of protected property interests when legislation affecting those interests also affects Indians. The insidious precedent established is that Acts of Congress are unrestrained by the Constitution when legislation, in some fashion, concerns Indian affairs. Additionally, the courts below effectively held that the status (or race) of an individual determines whether that individual has access to the federal courts to vindicate federal rights and whether federal courts have the power to exercise judicial review. These questions are surely fundamental and important.

B. The Opinions Below Bar Petitioners From Obtaining Judicial Review Of The Statutes At Issue.

The Seneca Nation suggests that Petitioners could obtain judicial review of the Settlement Act of 1990, 25 U.S.C. §1774, ("Settlement Act of 1990") by suing a federal official. Seneca Nation Opp. at 11-12. Simultaneously, the Nation applauds the Second Circuit's conclusion that the Nation is an indispensable

party to any action challenging the constitutionality of the Settlement Act of 1990. *Id.* The Nation fails to explain how the addition of a federal official to the list of defendants below would have altered the application of Fed. R. Civ. P. 19 and the indispensable party doctrine. The Nation's status as an indispensable party would be unaffected by the presence of additional defendants.

Moreover, federal officials *were involved* in the proceedings below. As required by 28 U.S.C. §2403(a), the District Court certified the constitutional claims concerning the Settlement Act of 1990 to the U. S. Department of Justice and the U. S. Attorney for the Western District of New York. App. at 45a-46a. The United States decided not to intervene. App. at 73a.

The decisions below are unambiguous. Federal courts in the Second Circuit may not review or construe federal statutes which concern Indian affairs unless that review is sought by Indians. It is not surprising that the Seneca Nation cites no case to support of its novel assertion that Petitioners must sue federal officials to obtain judicial review of the Settlement Act of 1990. No such case exists.

C. *Dry Creek Lodge* Remains A Vital Decision With Force Which Creates An Intolerable Conflict Among The Circuits.

The Seneca Nation inaccurately asserts in its Opposition that the Tenth Circuit has not followed its holding in *Dry Creek Lodge, Inc. v. Arapahoe & Shoshone Tribes,* 623 F. 2d 682 (CA 10 1980) *cert. denied,* 449 U.S. 1118 (1981). Seneca Nation Opp. at 9. Although the Tenth Circuit has had numerous opportunities to overrule *Dry Creek Lodge* it has steadfastly affirmed that decision's exception to Indian sovereign immunity.

In *White v. Pueblo of San Juan*, 728 F. 2d 1307 (CA10 1984), the Tenth Circuit expressly reconciled its decision in *Dry Creek Lodge* with this Court's decision in *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978). *White, supra*, 728 F.2d at 1309-1312. The court emphasized that *Dry Creek Lodge* was decided after *Santa Clara* and reiterated that the two were compatible.

The court recognized that the *Dry Creek Lodge* exception to Indian sovereign immunity, permitting suits against Indian tribes in federal court, was necessary in cases where non-Indian litigants otherwise had no remedy whatsoever. *Id.* at 1310, 1312.

Furthermore, the Tenth Circuit noted that *Dry Creek Lodge* was distinguished from *Santa Clara* because *Dry Creek Lodge* concerned matters outside of internal tribal affairs and it involved a dispute between non-Indians and the tribe. *Id.* at 1312. This Court has recognized that *Santa Clara* is distinguished by its intratribal character. *Nat. Farmers Union Ins. Co. v. Crow Tribe of Indians*, 471 U.S. 845, 852 n. 14 (1985).

Like *Dry Creek Lodge*, the matter herein concerns non-Indians and a dispute outside of internal tribal affairs. The case at bar actually is much stronger than that presented in *Dry Creek Lodge*. Petitioners do not rely on the Indian Civil Rights Act ("ICRA") as the source of their claims nor as the basis for jurisdiction. Rather, Petitioners rely on specific Acts of Congress crafted exclusively to govern the lease relationship at issue.

Dry Creek Lodge remains a vital opinion with force. It has created tremendous confusion for litigants and lower courts. The conflict among the Circuits caused by *Dry Creek Lodge* is intolerable and should be resolved by this Court.

D. The Seneca Nation's Brief In Opposition Misrepresents The Effects Of The Settlement Act Of 1990.

The Seneca Nation maintained in the courts below, and now asserts by its opposition herein, that the Settlement Act of 1990 "ratifies" the Agreements entered into between the Seneca Nation and the City of Salamanca. Seneca Nation Opp. at 8 ("Moreover, the special problems involved in Seneca leasing have recently been addressed and resolved by Congress, which ratified the agreement providing new leases.") Nowhere does the Settlement Act of 1990 say that. Apparently, the Nation wishes to burden Congress, and thus the United States, with responsibility for the terms and conditions of the Agreements and 40/40 Leases.

It is manifestly clear that Congress wished to *extricate* itself from responsibility and liability for the terms and conditions of new leases between the Seneca Nation and lessees. Congress *expressly prohibited* the United States and New York State from negotiating, reviewing or endorsing the particulars of new leases between the Nation and lessees. The Act clearly stated that the Nation and lessees each were to represent their own interests in negotiations for new leases. Settlement Act of 1990 at §5. App. at 134a-135a. There have been *no* negotiations between the Petitioners and the Seneca Nation since enactment of the Settlement Act of 1990.[1]

[1] Not only do the decisions below bar Petitioners from obtaining judicial review of the Settlement Act of 1990, they presumably would also bar any action by Petitioners to *enforce* that Act. Since the Court of Appeals held that the Seneca Nation is a necessary party to litigation arising under the 1990 Act, Petitioners' action to enforce the Act's requirement that the Nation negotiate with Petitioners would be barred by sovereign immunity. No less than three times

(Footnote continued on following page.)

No government in this country enjoys the breadth of immunity which the Seneca Nation, with the lower courts' collaboration, has arrogated to itself herein.

The decisions below distort the doctrine of Indian sovereign immunity and transform it from a defensive shield into a formidable offensive weapon capable of severing Petitioners from the protection of the U. S. Constitution. This court recently refused to permit such offensive use of Indian sovereign immunity. *Blatchford v. Native Village of Noatak*, _____ U. S. _____, 111 S. Ct. 2578 (1991).

The will of Congress in the Acts of 1875 (18 Stat. 330), 1890 (26 Stat. 558), and the Settlement Act of 1990 is ignored by the decisions below. "The more appropriate presumption in this case is that Congress intended to honor legitimate expectations in the ownership [or possession] of real property and not to disturb them." *County of Oneida, N.Y. v. Oneida Indian, Etc.*, 470 U.S. 226, 273 (1985) (Stevens, *J.*, dissenting).

(Footnote continued from preceding page.)
since enactment of the Settlement Act of 1990, Petitioners have demanded negotiations with the Seneca Nation. App. at 553a, 566a, 572a. The Nation responded by threatening Petitioners that they would receive *no lease at all* if they persisted in their demands. App. at 560a, 574a. The Nation's opposition blatantly acknowledges the validity of Petitioner's argument that the dispute resolution process outlined in the Agreements and the 40/40 Lease, which contemplates litigation in the District Court, is wholly unenforceable against the Seneca Nation. Petition For A Writ of Certiorari ("Cert. Pet.") at 10 n.8.

E. At A Minimum This Court Should Vacate The Decisions Below And Remand To The District Court For Consideration Of Relevant Legislative History.

Throughout the proceedings in the lower courts the Seneca Nation steadfastly argued that the legislative history of the Acts of 1875 and 1890 was irrelevant.[2] Now, in its Opposition, the Seneca Nation acknowledges that legislative history is sufficient to waive Indian sovereign immunity. Seneca Nation Opp. at 6-7 n.9.

Instead of arguing that legislative history is irrelevant, the Seneca Nation asserts that the courts below "carefully considered the Act's history" and correctly determined that it did not waive the Nation's immunity from suit. Seneca Nation Opp. at 5-6. It is clear from the district and appellate court decisions that those courts did not consider legislative history pertinent to the construction of the Acts of 1875 and 1890. Cert. Pet. at 18.

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[2] In its Brief on appeal to the Court of Appeals for the Second Circuit, the Seneca Nation described the District Court's opinion herein as follows:

> The court found resort to the legislative history of that act [The Act of 1875] unnecessary in light of this conclusion [that the language did not confer a right to sue on lessees] and the well established rule that any ambiguities in federal Indian statutes should be resolved in favor of the Indians." Brief for Appellee Seneca Nation of Indians at p. 12.

Responding to lessees argument to the Second Circuit that legislative history was essential to a proper construction of the Acts of 1875 and 1890, the Seneca nation asserted:

> The Court below correctly held that resort to the 1875 Act's legislative history is not necessary since *Martinez* requires that any waiver of immunity must be unequivocally expressed in the language of the Act and cannot be implied. *Id.* at p. 36.

The decisions below are infected with reversible error because the courts refused to acknowledge that legislative history was a necessary guide to a proper construction of the Act of 1875 as amended by the Act of 1890. Cert. Pet. at 18. At a minimum, Petitioners request that this Court grant their Petition for Writ of Certiorari, vacate the decisions below, and remand to the District Court for the Western District of New York, for a full consideration of the legislative history of the Acts of 1875 and 1890.

CONCLUSION

For all of the foregoing reasons, Petitioners continue to request that this Court grant the Petition for a Writ of Certiorari.

Respectfully submitted,

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